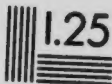
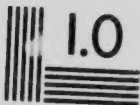


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NOTES, BILLS AND CHEQUES



THE
BILLS OF EXCHANGE
ACT

CHAP. 119, R. S. C.

WITH A
COPIOUS INDEX

BY
WALTER EDWIN LEAR
Of Osquate Hall

Compiler of Digest Canadian Case Law, 1901-5
Author Criminal Code Annotated, and a
Work on Oaths and Affirmations, etc.

ALSO THE
ANNOTATIONS
Of the Act as prepared by the Editors for the R.S.C.

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BILLS OF EXCHANGE

R. S. C. CHAPTER 119.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

1. **Short Title.**—This Act may be cited as the Bills of Exchange Act. 53 V., c. 33, s. 1.

2. **Interpretation.**—In this Act, unless the context otherwise requires,—

- (a) **'acceptance'** means an acceptance completed by delivery or notification;
- (b) **'action'** includes counter-claim and set-off;
- (c) **'bank'** means an incorporated bank or savings bank carrying on business in Canada;
- (d) **'bearer'** means the person in possession of a bill or note which is payable to bearer;
- (e) **'bill'** means bill of exchange, and **'note'** means promissory note;
- (f) **'delivery'** means transfer of possession, actual or constructive, from one person to another;
- (g) **'holder'** means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof;
- (h) **'endorsement'** means an endorsement completed by delivery;
- (i) **'issue'** means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;
- (j) **'value'** means valuable consideration;
- (k) **'defence'** includes counter-claim;
- (l) **'non-business days'** means days directed by this Act to be observed as legal holidays or non-judicial days.

2. Any day other than as aforesaid is a **business day.** 53 V., c. 33, ss. 2 and 91.

B. E. — I

PART I.

GENERAL.

3. Thing Done in Good Faith.—A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not 53 V., c. 33, s. 89.

4. Signature.—Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some person by or under his authority. 53 V., c. 33, s. 90.

5. What Required of Corporation.—In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. 53 V., c. 33, s. 90.

6. Computation of Time.—Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 53 V., c. 33, s. 91.

7. Crossing Dividend Warrants.—The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. 53 V., c. 33, s. 94.

8. The Bank Act not Affected.—Nothing in this Act shall affect the provisions of the Bank Act. 53 V., c. 33, s. 95.

9. Imperial Acts, 15 Geo. III. c. 51, and 17 Geo. III. c. 30.—The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled *An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year

of His said Majesty's reign, intituled *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. 53 V., c. 33, s. 95.

10. Common Law of England.—The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. 54-55 V., c. 17, s. 8.

11. Protest Prima Facie Evidence.—A protest of any bill or note within Canada, and any copy thereof as copied by the notary or justice of the peace, shall, in any action, be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest or copy. 53 V., c. 33, s. 93.

12. Copy of Protest, Prima Facie Evidence.—If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service. 53 V., c. 33, s. 71.

13. Officer of Bank not to Act as Notary.—No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. 53 V., c. 33, s. 51.

14. Consideration, Purchase Money of Patent.—Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words **Given for a patent right.**

2. Absence of Necessary Words.—Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. 53 V., c. 33, s. 30.

15. Transferee to take with Equities.—The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. 53 V., c. 33, s. 30.

16. Transferring Defective Note.—Every one who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *Given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an **indictable offence and liable to imprisonment** for any term not exceeding **one year**, or to such **fine**, not exceeding **two hundred dollars**, as the court thinks fit. 53 V., c. 33, s. 30.

PART II.

BILLS OF EXCHANGE.

Form of Bill and Interpretation.

17. Bill of Exchange Defined.—A Bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

2. Non-compliance with Requisites.—An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange.

3. **Unconditional Order.**—An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

(a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,

(b) a statement of the transaction which gives rise to the bill;

is unconditional. 53 V., c. 33, s. 3.

18. **Instrument Payable on Contingency.**—An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

2. **A Bill may be Addressed to two or more Drawees**, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. 53 V., c. 33, ss. 6 and 11.

19. **Payee, Drawer or Drawee.**—A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

2. **Two or more Payees.**—A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

3. **Holder of Office Payee.**—A bill may be made payable to the holder of an office for the time being. 53 V., c. 33, ss. 5 and 7.

20. **The Drawee must be Named** or otherwise indicated in a bill with reasonable certainty. 53 V., c. 33, s. 6.

21. **Transfer Words.**—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

2. **A Negotiable Bill** may be payable either to order or to bearer.

3. **A Bill is Payable to Bearer** which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

4. **Certainty of Payee.**—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

5. **Where the Payee is a Fictitious** or non-existing person, the bill may be treated as payable to bearer. 53 V., c. 33, ss. 7 and 8.

22. **A Bill is Payable to Order** which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

2. **When Payable to Person or Order.**—Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. 53 V., c. 33, s. 8.

23. **A Bill is Payable on Demand,**—

(a) which is expressed to be payable on demand, or on presentation; or,

(b) in which no time for payment is expressed.

2. **Endorsed when Overdue.**—Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. 53 V., c. 33, s. 10.

24. **A Bill is Payable at a Determinable Future Time**, within the meaning of this Act, which is expressed to be payable,—

(a) **at sight** or at a fixed period after date or sight;

(b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1.

25. **An Inland Bill** is a bill which is, or on the face of it purports to be,—

(a) both drawn and payable within Canada; or,

(b) drawn within Canada upon some person resident therein.

2. **Any other bill** is a foreign bill.

3. **Presumption.**—Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. 53 V., c. 33, s. 4.

26. **Bill or Note.**—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his **option**, either as a bill of exchange or as a promissory note. 53 V., c. 33, s. 5.

27. **A Bill is not Invalid** by reason only,—

- (a) that it is **not dated**;
- (b) that it does not **specify the value** given, or that any value has been given therefor;
- (c) that it does not **specify the place** where it is drawn or the place where it is payable;
- (d) that it is **antedated or postdated**, or that it bears date on a **Sunday** or other **non-juridical day**. 53 V., c. 33, ss. 3 and 13.

28. **Sum Certain.**—The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

- (a) with interest;
- (b) by stated instalments;
- (c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;
- (d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

2. **Figures and Words.**—Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

3. **With Interest.**—Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. 53 V., c. 33, s. 9.

29. **True Date Presumption.**—Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. 53 V., c. 33, s. 13.

30. **Undated Bill Payable after Date.**—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that.—

(a) where the holder in good faith and by mistake inserts a **wrong date**; and,

(b) **Liability of Holder**—in every other case where a wrong date is inserted;

if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2.

31. **Perfecting Bill.**—Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 53 V., c. 33, s. 20.

32. **When to be Complete.**—In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given: Provided that if any such

instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

2. **Reasonable time** within the meaning of this section is a question of fact. 53 V., c. 33, s. 20.

33. Referee in Case of Need.—The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

2. It is in the **option** of the holder to resort to the referee in case of need or not, as he thinks fit. 53 V., c. 33, s. 15.

34. Stipulations.—The drawer of a bill, and any endorser, may insert therein an express stipulation,—

- (a) negating or limiting his own liability to the holder;
- (b) waiving, as regards himself, some or all of the holder's duties. 53 V., c. 33, s. 16.

Acceptance and Interpretation.

35. Acceptance Defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

2. **Drawee's Name Wrong.**—Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. 53 V., c. 33, s. 17.

36. An Acceptance is invalid unless it complies with the following conditions, namely:—

- (a) It must be written on the bill and be signed by the drawee;
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

2. **The mere signature** of the drawee written on the bill without additional words is a sufficient acceptance. 53 V., c. 33, s. 17.

37. A Bill may be Accepted,—

- (a) before it has been signed by the drawer, or while otherwise incomplete;
- (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

2. **Acceptance after Dishonour.**—When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3.

38. Kinds.—An acceptance is either,—

- (a) general; or,
- (b) qualified.

2. **A general acceptance** assents without qualification to the order of the drawer.

3. **A qualified acceptance** in express terms varies the effect of the bill as drawn, and in particular, an acceptance is qualified which is,—

- (a) **conditional**, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) **partial**, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) **Time**—qualified as to time;
- (d) **Drawees**—the acceptance of some one or more of the drawees, but not of all.

4. **Specified Place.**—An acceptance to pay at a particular specified place is not on that account conditional or qualified. 53 V., c. 33, s. 19.

39. When Acceptance Complete.—Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is

incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 53 V., c. 33, s. 21.

Delivery.

40. Requisites.—As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,—

- (a) in order to be effectual must be made either by or under the **authority** of the party drawing, accepting or endorsing, as the case may be;
- (b) may be shown to have been **conditional** or for a special purpose only, and not for the purpose of transferring the property in the bill.

2. Presumption.—If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. 53 V., c. 33, s. 21.

41. Parting with Possession.—Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. 53 V., c. 33, s. 21.

Computation of Time, non-juridical days and days of grace.

42. Computation of Time.—Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such province, shall be the **last day of grace**. 53 V., c. 33, s. 14.

43. Non-juridical Days.—In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:—

(a) In all the Provinces of Canada,

Sundays,
New Year's Day,
Good Friday,
Easter Monday,
Victoria Day,
Dominion Day,
Labour Day,
Christmas Day,

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign:

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada.

The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(b) In the Province of Quebec, in addition to the said days,

The Epiphany,
The Ascension,
All Saints' Day,
Conception Day;

(c) Provincial Proclamation.—In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such province for a public holiday or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. 53 V., c. 33, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 E. VII., c. 12, ss. 2 and 4.

44. Time of Payment.—Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. 53 V., c. 33, s. 14.

45. Sight Bill.—Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date

of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. 53 V., c. 33, s. 14.

46. Due Date.—Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace.

2. The term 'month' in a bill means the calendar month. 53 V., c. 33, s. 14.

Capacity and Authority of Parties.

47. Capacity to Incur Liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a **corporation** to make itself liable as drawer, acceptor or endorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation. 53 V., c. 33, s. 22.

48. Effect of Disability on Holder.—Where a bill is drawn or endorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. 53 V., c. 33, s. 22.

49. Forgery.—Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that,—

(a) **Ratification.**—Nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

(b) **Recovery of Amount Paid on Forged Cheque.**—If a cheque payable to order is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery.

2. **Default of Notice.**—In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights. 53 V., c. 33, s. 24.

50. **Recovery of amount Paid on Forged Endorsement.**—If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement, if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

2. **Rights over.**—Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement.

3. **Notice of Forgery.**—Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same

way, as notice of protest or dishonour of a bill may be given or addressed under this Act. 60-61 V., c. 10, s. 1.

51. A Signature by Procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority. 53 V., c. 33, s. 25.

52. Signing in Representative Capacity.—Where a person signs a bill as drawer, endorser or acceptor, and add words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

2. Rule for Determining Capacity.—In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. 53 V., c. 33, s. 26.

Consideration.

53. Valuable Consideration for a bill may be constituted by,—

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability;

2. Form of Bill.—Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. 53 V., c. 33, s. 27.

54. Holder for Value.—Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

2. In Case of Lien.—Where the holder of a bill has a lien on it, arising either from contract or by implication of law,

he is deemed to be a holder for value to the extent of the sum for which he has a lien. 53 V., c. 33, s. 27.

55. An Accommodation Party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person.

2. Liability of Party.—An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. 53 V., c. 33, s. 28.

56. A Holder in Due Course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(a) **Notice.**—That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact:

(b) **Good Faith.**—That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

2. Title Defective.—In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 53 V., c. 33, s. 29.

57. Right of Subsequent Holder.—A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. 53 V., c. 33, s. 29.

58. Presumption of Value.—Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

2. Due Course.—Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the **burden of proof** that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. 53 V., c. 33, s. 30.

59. Usurious Consideration.—No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. 53 V., c. 33, s. 30.

Negotiation.

60. By Transfer.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

2. By Delivery.—A bill payable to bearer is negotiated by delivery.

3. By Endorsement.—A bill payable to order is negotiated by the endorsement of the holder completed by delivery. 53 V., c. 33, s. 31.

61. Without Endorsement.—Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferor.

2. Representative Capacity.—Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. 53 V., c. 33, s. 31.

- 62. An Endorsement** in order to operate as a negotiation,
(a) must be **written** on the bill itself and be signed by the endorser;
(b) must be an endorsement of the entire bill.

2. An endorsement written on an **allonge**, or on a *copy* of a bill issued or negotiated in a country where *copies* are recognized, is deemed to be written on the bill itself.

3. **A Partial Endorsement**, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. 53 V., c. 33, s. 32.

63. The Simple Signature of the endorser on the bill, without additional words, is a sufficient endorsement.

2. **Two or More Payees.**—Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. 53 V., c. 33, s. 32.

64. Misspelling Payee's Name.—Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature. 53 V., c. 33, s. 32.

65. Presumption as to Order of Endorsement.—Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. 53 V., c. 33, s. 32.

66. Disregarding Condition.—Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not. 53 V., c. 33, s. 33.

67. Endorsement in Blank.—An endorsement may be made in blank or special.

2. An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.

3. **A Special Endorsement** specifies the person to whom, or to whose order, the bill is to be payable.

4. **Application of Act to.**—The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

5. **Conversion of Blank Endorsement.**—Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. 53 V., c. 33, ss. 32 and 34.

68. **Restrictive Endorsement.**—An endorsement may also contain terms making it restrictive.

2. An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order, for collection.'

3. **Rights of Endorsee.**—A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

4. **If Further Transfer is Authorized.**—Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. 53 V., c. 33, ss. 32 and 35.

69. **When Negotiability Ceases.**—Where a bill is negotiable in its origin, it continues to be negotiable until it has been,—

(a) restrictively endorsed; or,

(b) discharged by payment or otherwise. 53 V., c. 33, s. 36.

70. Where an Overdue Bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it.

2. A Bill Payable on Demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

3. What is an Unreasonable Length of Time for such purpose is a question of fact. 53 V., c. 33, s. 36.

71. Presumption as to.—Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. 53 V., c. 33, s. 36.

72. Taking Bill with Notice of Dishonour.—Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. 53 V., c. 33, s. 36.

73. Re-issue of Bill.—Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. 53 V., c. 33, s. 37.

74. Rights of Holder.—The rights and powers of the holder of a bill are as follows:

(a) **He may Sue** on the bill in his own name;

(b) **Prior Defects.**—Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c) **Where His Title is Defective.** if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and,

- (d) **Discharge from Him.**—Where his title is defective if he obtains payment of the bill the person who pays him in due course get a valid discharge for the bill. 53 V., c. 33, s. 38.

Presentment for Acceptance.

75. When Necessary.—Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. **Where a Bill Expressly Stipulates** that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

3. **In No Other Case** is presentment for acceptance necessary in order to render liable any party to the bill. 53 V., c. 33, s. 39.

76. Presentment Excused.—Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. 53 V., c. 33, s. 39.

77. Sight Bill.—Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

2. **If He Does not Do so,** the drawer and endorsers prior to that holder are discharged.

3. **Reasonable Time.**—In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. 53 V., c. 33, s. 40; 54-55 V., c. 17, s. 5.

78. Rules.—A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:

- (a) **By Holder to Drawee.**—The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;
- (b) **To All Drawees.**—Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only;
- (c) **Where the Drawee is Dead.** presentment may be made to his personal representative;
- (d) Where authorized by agreement or usage, a presentment through the **post office** is sufficient. 53 V., c. 33, s. 41.

79. Excuses.—Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,—

- (a) **Where the Drawee is Dead**, or is a fictitious person or a person not having capacity to contract by bill;
- (b) **Impracticability**—where, after the exercise of reasonable diligence, such presentment cannot be effected;
- (c) where although the presentment has been irregular, acceptance has been refused on some other ground.

2. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. 53 V., c. 33, s. 41; 54-55 V., c. 17, s. 6.

80. Time for Acceptance.—The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter.

2. **Dishonour.**—When a bill is so duly presented for acceptance and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance.

3. **Loss of Rights.**—If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers.

1. **Date of Acceptance.**—In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid, but not later than the day of his actual acceptance of the bill.

5. **Refusing Acceptance.**—If the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance. 2 E. VII., c. 2, s. 1.

81. **Dishonour.**—A bill is dishonoured by non-acceptance,

(a) **Presentment**—when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or,

(b) when presentment for acceptance is excused and the bill is not accepted. 53 V., c. 33, s. 43.

82. **Recourse in Such Case.**—Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. 53 V., c. 33, s. 43.

83. **Qualified Acceptance.**—The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

2. **Assent.**—When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. 53 V., c. 33, s. 44.

84. **Where a Qualified Acceptance is Taken.** and the drawer or an endorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill: **Provided** that this section shall not apply to a **partial acceptance**, whereof due notice has been given. 53 V., c. 33, s. 44.

Presentment for Payment.

85. **Necessity.**—Subject to the provisions of this Act, a bill must be duly presented for payment.

2. **If it is Not so Presented.** the drawer and endorsers shall be discharged.

3. **Manner of.**—Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment. 53 V., c. 33, ss. 45 and 52.

86. Time for.—A bill is duly presented for payment which is presented, —

(a) **Due Date**—when the bill is not payable on demand, on the day it falls due;

(b) **Demand Bill**—when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

2. **Reasonable Time.**—In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. 53 V., c. 33, s. 45.

87. By and to Whom.—Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place as hereinafter defined, and either to the person designated by the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found.

2. **Two Acceptors.**—When a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

3. **When the Drawee or Acceptor of a Bill is Dead,** and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. 53 V., c. 33, s. 45.

88. A Bill is Presented at the Proper Place.—

(a) where a place of payment is specified in the bill or acceptance, and the bill is there presented;

- (b) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
- (c) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not at his ordinary residence, if known;
- (d) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. 53 V., c. 33, s. 45.

89. Sufficient Presentment.—Where a bill is presented at the proper place as aforesaid and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found, no further presentment to the drawee or acceptor is required. 53 V., c. 33, s. 45.

90. Presentment at Post Office.—Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.

2. Through Post Office.—Where authorized by agreement or usage, a presentment through the post office is sufficient. 53 V., c. 33, s. 45.

91. Delay in making Presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 53 V., c. 33, s. 46.

92. Presentment for Payment is dispensed with,—

- (a) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

- (b) where the drawee is a **fictitious** person;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an endorser, where the bill was accepted or made for the **accommodation** of that endorser, and he has no reason to expect that the bill would be paid if presented;
- (e) **by waiver** of presentment, express or implied.

2. **Not Dispensed with.**—The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment. 53 V., c. 33, s. 46.

93. When no Place of Payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable.

2. **When no Place of Payment is specified** in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the **omission** to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court.

3. **Delivery on Payment.**—When a bill is paid the holder shall forthwith deliver it up to the party paying it. 53 V., c. 33, s. 52.

94. Time for Presentment.—Where the address of the acceptor for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity.

2. **Parties in Different Places.**—Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

3. **Delay in Presentment** or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment. 53 V., c. 33, s. 66.

Dishonour.

95. A Bill is Dishonoured for Non-payment,—

- (a) when it is duly presented for payment and payment is refused or cannot be obtained; or,
- (b) when presentment is excused and the bill is overdue and unpaid.

2. **Recourse.**—Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. 53 V., c. 33, s. 47.

96. Notice of Dishonour.—Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged; Provided that,—

- (a) **Subsequent Holder**—where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;
- (b) **Notice of Non-payment**—where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

2. **Notice to Acceptor.**—In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. 53 V., c. 33, ss. 48 and 52.

97. Notice.—Notice of dishonour in order to be valid and effectual must be given,—

- a) **not later than the juridical or business day next following the dishonour of the bill;**

- (b) **by or on behalf of the holder**, or by or on behalf of an endorser, who at the time of giving it, is himself liable on the bill;
- (c) **in the case of the death**, if known to the party giving notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found;
- (d) **in case of two or more drawers or endorsers** who are not partners, to each of them, unless one of them has authority to receive notice for the others. 53 V., c. 33, s. 49.

98. Notice of Dishonour may be given,—

- (a) as soon as the bill is dishonoured;
- (b) **to the party** to whom the same is required to be given, or to his agent in that behalf;
- (c) **by an agent** either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;
- (d) **in writing** or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

2. **A misdescription** of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. 53 V., c. 33, s. 49.

99. In point of form.—

- (a) **the return of a dishonoured bill** to the drawer or an endorser is a sufficient notice of dishonour;
- (b) a written notice **need not be signed**.

2. **An insufficient written notice** may be supplemented and validated by verbal communication. 53 V., c. 33, s. 49.

100. Notice to Agent.—Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder.

2. If the agent gives notice to his principal he must do so within the same time as if he were an independent holder. 53 V., c. 33, s. 49.

101. Notice to Antecedent Parties.—Where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that a holder has after dishonour. 53 V., c. 33, s. 49.

102. A Notice of Dishonour enures for the benefit,

- (a) of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder;
- (b) **Parties to Whom**—of the holder and of all endorsers subsequent to the party to whom notice is given, where given, by or on behalf of an endorser entitled under this Part to give notice. 53 V., c. 33, s. 49.

103. Sufficiency of Giving.—Notice of the dishonour of any bill payable in Canada shall notwithstanding anything in this Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence, or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

2. Sufficiency of Notice.—Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

3. Death of Party.—Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. 53 V., c. 33, s. 49.

104. Miscarriage in Post Service.—Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office. 53 V., c. 33, s. 49.

105. Delay in giving notice of dishonour is excused when the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate the notice must be given with reasonable diligence. 53 V., c. 33, s. 50.

106. Notice of Dishonour is dispensed with.—

(a) **Reasonable Diligence**—when after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged;

(b) **by waiver** express or implied.

2. Time of.—Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. 53 V., c. 33, s. 50.

107. Notice of dishonour is dispensed with as regards the drawer where, —

(a) the drawer and drawee are the same person;

(b) the drawee is a **fictitious person** or a person not having capacity to contract;

(c) the drawer is the person to whom the bill is presented for payment;

(d) the drawee or acceptor is, as between himself and the drawer, under **no obligation to accept** or pay the bill;

(e) the drawer has **countermanded payment**. 53 V., c. 33, s. 50.

108. Notice of dishonour is dispensed with as regards the endorser where, —

- (a) the drawee is a **fictitious person** or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill;
- (b) the endorser is the person to whom the bill is presented for payment;
- (c) the bill was accepted or made for his **accommodation** 53 V., c. 33, s. 50.

Protest.

109. Necessity of.—In order to render the acceptor of a bill liable it is not necessary to protest it. 53 V., c. 33, s. 52.

110. Protest is Dispensed with by any circumstances which would dispense with notice of dishonour. 53 V., c. 33, s. 51.

111. Delay in Noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. When the cause of delay ceases to operate, the bill must be noted or protested with **reasonable diligence**. 53 V., c. 33, s. 51.

112. Where a foreign bill appearing on the face of it to be such has been dishonoured by **non-acceptance** it must be duly protested for non-acceptance.

2. Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

3. Where a foreign bill has been accepted only as to part it must be protested as to the **balance**.

4. If a foreign bill is not protested as by this section required the drawer and **endorsers are discharged**. 53 V., c. 33, ss. 44 and 51.

113. Protest of Inland Bill.—Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it shall not, except in the province of **Quebec**, be necessary to note or protest an inland bill in

order to have recourse against the drawer or endorsers 53 V., c. 33, s. 51.

114. Discharge in Default of Protest.—In the case of an inland bill drawn upon any person in the province of Quebec or payable or accepted at any place in the said province, the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour.

2. Protest Unnecessary.—Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary. 53 V., c. 33, s. 51.

115. Subsequent Protest for Non-payment.—A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment. 53 V., c. 33, s. 51.

116. Protest for Better Security.—Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. 53 V., c. 33, s. 51; 54-55 V., c. 17, s. 7.

117. Acceptance for Honour.—Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

2. Protest for Non-payment.—When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. 53 V., c. 33, s. 66.

118. Noting Equivalent to Protest.—For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before

the expiration of the specified time or the taking of the proceeding. 53 V., c. 33, s. 92.

119. Noting or Protest.—Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour.

2. Extending Protest.—When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. 53 V., c. 33, ss. 51 and 92.

120. Protest on Copy or Particulars.—Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. 53 V., c. 33, s. 51.

121. Place of Protest.—A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill: Provided that,

(a) **Where Bill Returned**—when a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day;

(b) **Time When**—every protest for dishonour, either for non-acceptance or non-payment, may be made on the day of such dishonour, and in case of non-acceptance at any time after non-acceptance, and in case of non-payment at any time after three o'clock in the afternoon. 53 V., c. 33, s. 51.

122. Contents of Protest.—A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

- (a) the **person** at whose request the bill is protested;
- (b) the **place** and date of protest;
- (c) the cause or **reason** for protesting the bill;

- (d) the **demand** made and the answer given, if any; or,
- e) the fact that the drawee or acceptor could **not be found**. 53 V., c. 33, s. 51.

123. Official when Notary is Not Accessible.—Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. 53 V., c. 33, s. 93.

124. The expense of noting and protesting any bill and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon.

2. Notaries may charge the **fees** in each province heretofore allowed them. 53 V., c. 33, s. 93.

125. The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof.

2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms. 53 V., c. 33, s. 93.

126. When Notice of Protest Shall be Given.—Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served, if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this Part for notice of dishonour. 53 V., c. 33, s. 49.

Liabilities of Parties.

127. Equitable Assignment.—A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. 53 V., c. 33, s. 53.

128. Engagement by Acceptance.—The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. 53 V., c. 33, s. 54.

129. Estoppel.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course—

- (a) the existence of the drawer, the **genuineness of his signature**, and his capacity and authority to draw the bill;
- (b) in the case of a bill payable to drawer's order, the **capacity of the drawer** to endorse, but not the genuineness or validity of his endorsement;
- (c) in the case of a bill payable to the order of a third person, the existence of the **payee** and his then **capacity to endorse**, but not the genuineness or validity of his endorsement. 53 V., c. 33, s. 54.

130. The drawer of a bill, by drawing it,—

- (a) **engages that** on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;
- (b) **is precluded** from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 55.

131. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. 53 V., c. 33, ss. 23 and 56.

132. Trade or Assumed Name.—Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name.

2. The signature of the **name of a firm** is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm. 53 V., c. 33, s. 23.

133. The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized,—

- (a) **engages that** on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;
- (b) is precluded from denying to a holder in due course the **genuineness** and regularity in all respects of the drawer's signature and all previous endorsements;
- (c) is precluded from denying to his immediate or a subsequent endorser that the bill was, at the time of his endorsement, **a valid and subsisting bill**, and that he had then a good title thereto. 53 V., c. 33, s. 55.

134. Measure of Damages.—Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,—

- (a) **the amount** of the bill;
- (b) **interest** thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;
- (c) **the expenses** of noting and protest. 53 V., c. 33, s. 57.

135. Recovery of Same.—In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser, the damages aforesaid. 53 V., c. 33, s. 57.

136. Re-exchange and Interest.—In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. 53 V., c. 33, s. 57.

137. Transferrer by Delivery.—Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a "transferrer by delivery."

2. A transferrer by delivery is not liable on the instrument. 53 V., c. 33, s. 58.

138. Warranty by.—A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value,—

(a) that the bill is what it purports to be;

(b) that he has a right to transfer it; and,

(c) that at the time of transfer he is not aware of any fact which renders it valueless. 53 V., c. 33, s. 58.

Discharge of Bill.

139. Payment.—A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

2. **Payment in due course** means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

3. **Where an accommodation bill** is paid in due course by the party accommodated, the bill is discharged. 53 V., c. 33, s. 59.

140. Payment by Drawer or Endorser.—Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged; but,—

(a) **Gives rights.**—Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(b) **Second negotiation.**—Where a bill is paid by an endorser or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. 53 V., c. 33, s. 59.

141. Acceptor Holding at Maturity.—When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. 53 V., c. 33, s. 60.

142. Renouncing Rights.—When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

2. Against One Party.—The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

3. A renunciation must be in **writing**, unless the bill is delivered up to the acceptor.

4. Nothing in this section shall affect the rights of a holder in due course without notice of renunciation. 53 V., c. 33, s. 61.

143. Cancellation of Bill.—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

2. Of any Signature.—In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

3. Discharge of Endorser.—In such case, any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. 53 V., c. 33, s. 62.

144. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the **burden of proof** lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. 53 V., c. 33, s. 62.

145. Alteration of Bill.—Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorser: Provided that where a bill has been materially altered, but the alteration is not apparent,

and the bill is in the hands of a **holder in due course**, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 53 V., c. 33, s. 63.

146. In particular any alteration,—

- a)* of the **date**;
- b)* of the **sum payable**;
- c)* of the **time** of payment;
- d)* of the **place** of payment;
- e)* by the **addition of a place** of payment without the acceptor's assent where a bill has been accepted generally;

is a material alteration. 53 V., c. 33, s. 63.

Acceptance and Payment for Honour.

147. Acceptance for Honour *supra* Protest.—Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 53 V., c. 33, s. 64.

148. In Part.—A bill may be accepted for honour for part only of the sum for which it is drawn. 53 V., c. 33, s. 64.

149. Deemed to be for Honour of Drawer.—Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. 53 V., c. 33, s. 64.

150. Maturity of After Sight Bill.—Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honour. 53 V., c. 33, s. 64.

151. Requirements.—An acceptance for honour *supra* protest, in order to be valid must,—

- (a) **be written** on the bill, and indicate that it is an acceptance for honour; and,
- (b) **be signed** by the acceptor for honour. 53 V., c. 33, s. 64.

152. Liability of Acceptor for Honour.—The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment and that he receives notice of these facts.

2. **To Holder as others.**—The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. 53 V., c. 33, s. 65.

153. Payment for Honour supra Protest.—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

2. **Where two or more persons offer** to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

3. Where the holder of a bill **refuses to receive payment** *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

4. **Entitled to Bill.**—The payee for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

5. **Liability for Refusing.**—If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. 53 V., c. 33, s. 67.

154. Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

2. **Declaration.**—The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 53 V., c. 33, s. 67.

155. **Discharge.**—Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is **subrogated for**, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. 53 V., c. 33, s. 67.

Lost Instruments.

156. **Holder to Have Duplicate of Lost Bill.**—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again.

2. **Refusal.**—If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be **compelled** to do so. 53 V., c. 33, s. 68.

157. **In any action or proceeding upon a bill**, the court or a judge may order that the loss of the instrument shall not be set up, provided an **indemnity** is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. 53 V., c. 33, s. 69.

Bill in a Set.

158. **Where a bill is drawn in a set**, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

2. **The acceptance** may be written on any part, and it must be written on one part only. 53 V., c. 33, s. 70.

159. **Endorsing More Than One Part.**—Where the holder of a set endorses two or more parts to different persons, he is

lie on every such part, and every endorser subsequent to the first, as if the bill were as in and to the effect of a bill of exchange, as if the several parts were separate bills.

2. **Negotiation to Different Holders.**—Where two or more parts of a bill are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

3. **If the drawee accepts more than one part,** and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

4. **Part Accepted.**—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

5. Subject to the provisions of this section, where any one part of a bill drawn in a set is **discharged** by payment or otherwise, the whole bill is discharged. 53 V., c. 33, s. 70.

Conflict of Laws.

160. **Requisites of Form.**—Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made: Provided that,

(a) where a bill is issued out of Canada, it is not invalid by reason only that it is **not stamped** in accordance with the law of the place of issue;

(b) where a bill, issued out of Canada, **conforms**, as regards requisites in form, **to the law of Canada**, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. 53 V., c. 33, s. 71.

161. Lex Loci.—Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. 53 V., c. 33, s. 71.

162. Law as to Duties of Holder.—The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. 53 V., c. 33, s. 71.

163. Currency.—Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. 53 V., c. 33, s. 71.

164. Due Date.—Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. 53 V., c. 33, s. 71.

PART III.

CHEQUES ON A BANK.

165. A cheque is a bill of exchange drawn on a bank, payable on demand.

2. Provisions as to Bills Apply.—Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72.

166. Presentment for Payment.—Subject to the provisions of this Act, —

—where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the

person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

- (b) **the holder of such cheque**, as to which such drawer or person is discharged, **shall be a creditor**, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

2. **Reasonable Time.**—In determining what is a reasonable time, within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V., c. 33, s. 73.

167. Authority to Pay.—The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined by,

- (a) **countermand** of payment;
 (b) notice of the customer's **death**. 53 V., c. 33, s. 74.

Crossed Cheques.

168. Definition.—Where a cheque bears across its face an addition of,—

- (a) the word '**bank**' between two parallel transverse lines, either with or without the words 'not negotiable'; or,
 (b) two parallel transverse lines simply, either with or without the words 'not negotiable';

such addition constitutes a crossing, and the cheque is **crossed generally**.

2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is **crossed specially** and to that bank. 53 V., c. 33, s. 75.

169. By Drawer.—A cheque may be crossed generally or specially by the drawer.

2. Where a cheque is uncrossed, the holder may cross it generally or specially.

3. Where a cheque is crossed generally, the holder may cross it specially.

4. Where a cheque is crossed generally or specially, the holder may add the words **not negotiable**.

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another **bank for collection**.

6. **Changing Crossing. Uncrossing**.—Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself.

7. A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words **pay** and initialling the same. 53 V., c. 33, s. 76.

170. **Materially**.—A crossing authorized by this Act is a material part of the cheque.

2. **Altering Crossing**.—It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 78.

171. **Crossed to more than one Bank**.—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78.

172. **Liability for Improper Payment**.—Where the bank on which a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible for incurring any liability, nor

stand the payment is questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. 53 V., c. 33, s. 78.

173. Protection in such Case.—Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79.

174. Where a person takes a crossed cheque which bears on it the words '**not negotiable**,' he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80.

175. Customer without Title.—Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81.

PART IV.

PROMISSORY NOTES.

176. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.

2. **Endorsed by Maker.**—An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

3. A note is not invalid by reason only that it contains also a **pledge** of collateral security with authority to sell or dispose thereof. 53 V., c. 33, s. 82.

177. Inland Note.—A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note.

2. Any other note is a **foreign note**. 53 V., c. 33, s. 82.

178. A promissory note is inchoate and incomplete until **delivery** thereof to the payee or bearer. 53 V., c. 33, s. 83.

179. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or **jointly and severally**, according to its tenor.

2. **Individual Promise.**—Where a note runs 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several note. 53 V., c. 33, s. 84.

180. Demand Note Presentment.—Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

2. In determining what is a **reasonable time**, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. 53 V., c. 33, s. 85.

181. Endorser Discharged.—If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security. 53 V., c. 33, s. 85.

182. Not Deemed Overdue.—Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which

he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 53 V., c. 33, s. 85.

183. Presentment, Where.—Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2. **Liability of Maker.**—In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

3. **Note Payable Generally.**—If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable. 53 V., c. 33, s. 86.

184. As to Endorser.—Presentment for payment is necessary in order to render the endorser of a note liable.

2. Where a note is in the body of it made payable at a particular place, presentment at that **place is necessary** in order to render an endorser liable.

3. **What Sufficient.**—When a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. 53 V., c. 33, s. 86.

185. The maker of a promissory note, by making it,—

- (a) **engages** that he will pay it according to its tenor;
- (b) **is precluded** from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 87.

186. Application of Act to Notes.—Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

2. **Terms Corresponding.**—In the application of such provisions the maker of a note shall be deemed to correspond

with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. **The provisions** of this Act as to bills relating to,—

- (a) presentment for acceptance;
 - (b) acceptance;
 - (c) acceptance *supra* protest;
 - (d) bills in a set;
- do not apply to notes. 53 V., c. 33, s. 88.

187. **Where a foreign note is dishonoured**, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. 53 V., c. 33, s. 88.

SCHEDULE.

FORM A.

NOTING FOR NON-ACCEPTANCE.

(*Copy of Bill and Endorsement.*)

On the 19 , the above bill was, by me, at the request of _____ presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of _____ and I received for answer: ‘ _____’;

The said bill is therefore noted for non-acceptance.

A. B.,

Notary Public.

(*Date and place.*)

19 .

Due notice of the above was by me served upon { A. B., }
the { drawer, } personally, on the _____ day of _____
{ endorser, }

(*or*, at his residence, office or usual place of business) in _____
on the _____ day of _____ (*or*, by depositing
such notice, directed to him at _____ in His Majesty's

post office in the city [town or village], on the day
of , and prepaying the postage thereon).

A. B.,

Notary Public.

(Date and place.)

19 .

53 V., c. 33, sch., form A.

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(Copy of Bill and Endorsements.)

On this day of , in the year 19 . I,
A. B., notary public for the province of , dwelling at
 , in the province of , at the request of
 , did exhibit the original bill of exchange, whereof a true
copy is above written, unto E. F., the { drawee thereof
 { acceptor }
personally (or, at his residence, office or usual place of busi-
ness) in , and, speaking to himself (or his wife, his clerk,
or his servant, &c.) did demand { acceptance } thereof; unto
 { payment }
which demand { he } answered: ‘

Wherefore I, the said notary, at the request aforesaid, have
protested, and by these presents do protest against the ac-
ceptor, drawer and endorsers (or drawer and endorsers) of
the said bill, and other parties thereto or therein concerned,
for all exchange, re-exchange, and all costs, damages and
interest, present and to come, for want of { acceptance } of
 { payment }
the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

53 V., c. 33, sch., form B.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A
BILL PAYABLE AT A STATED PLACE.*(Copy of Bill and Endorsements.)*

On this day of in the year 19 . I,
 A. B., notary public for the province of , dwelling
 at , in the province of , at the request
 of , did exhibit the original bill of exchange
 whereof a true copy is above written, unto E. F., the
 { drawee } thereof, at , being the stated
 { acceptor } place where the said bill is payable, and there speaking
 to did demand { acceptance }
 { payment }
 of the said bill; unto which demand he answered:—

Wherefore I, the said notary, at the request afore-said, have
 protested, and by these presents do protest against the ac-
 ceptor, drawer and endorsers (or drawer and endorsers) of
 the said bill and all other parties thereto or therein concerned,
 for all exchange, re-exchange, costs, damages and interest,
 present and to come for want of { acceptance } of the said bill.
 { payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
 Notary Public

53 V., c. 33, sch., form C.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PRO-
TESTED FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words 'and afterwards on, etc.' continuing as in the last preceding form, but introducing between the words 'did' and 'exhibit' the word

'again,' and in a parenthesis, between the words 'written' and 'unto,' the words: 'and which bill was by me duly noted for non-acceptance on the day of .'

But if the protest is not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words 'written' and 'unto,' the words: 'and which bill was on the day of , by , notary public for the province of noted for non-acceptance, as appears by his note thereof marked on the said bill.'

53 V., c. 33, sch., form D.

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of Note and Endorsements.)

On this day of , in the year 19 , I
A. B., notary public for the province of , dwelling
at , in the province of , at the request of
 , did exhibit the original promissory note, whereof
a true copy is above written, unto the promisor,
personally (or, at his residence, office or usual place of business in , and speaking to himself (or his wife, his clerk or his servant, etc.) did demand payment thereof; unto
which demand (he) answered: '
 (she)

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form E.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

* (Copy of Note and Endorsements.)

On this day of , in the year 19 , I,
A.B., notary public for the province of , dwelling at
 , in the province of ,
 , at the request of
 , did exhibit the original promissory note,
whereof a true copy is above written, unto
the promisor, at , being the stated place where the
said note is payable, and there, speaking to did
demand payment of the said note, unto which demand he
answered :

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B..

Notary Public.

53 V., c. 33, sch., form F.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-
ACCEPTANCE, OR OF A PROTEST FOR
NON-PAYMENT OF A BILL.

(Place and Date of Noting or of Protest.)

1st.

To P.Q. (*the drawer*)

at

Sir,

Your bill of exchange for \$ _____, dated at
the day of _____ upon E.F., in favour of C.D., payable _____ days
after { sight } was this day, at the request of
 { date }

FORM I.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR NOTE.

(to be subjoined to the Protest.)

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law, of the foregoing protest for { non-acceptance } of the { bill } thereoy
 { non-payment } { note }
 protested upon { P.Q., } the { drawer } personally, on the
 { C.D., } { endorsers }
 day of (or, at his residence, office or usual place of business) in , on the day of ; (or, by depositing such notice, directed to the said { P.Q., } at , in His Majesty's post office in { C.D., } on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,

Notary Public.

53 V., c. 33, sch., form I.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(Copy of a Bill or Note and Endorsements.)

On this day of , in the year 19 , I, N. O., one of His Majesty's justices of the peace for the district (or county, etc.), of , in the province of , dwelling at (or near) the village of , in the said district, there being no practising notary public at or near the said village (or any other legal cause), did, at the request of and in the presence of

well known unto me, exhibit the original

{ bill } whereof a true copy is above written unto P.Q., the
 { note }
 { drawer }
 { acceptor } thereof, personally (or at his residence, office or
 { promisor } usual place of business) in and speaking
 to himself (his wife, his clerk or his servant, etc.,) did demand
 { acceptance } thereof, unto which demand { he } answered:
 { payment } { she }

Wherefore I, the said justice of the peace, at the request
 aforesaid, have protested, and by these presents do protest

against the { drawer and endorsers }
 { promisor and endorsers } of the said
 { acceptor, drawer and endorsers }

{ bill } and all other parties thereto and therein concerned,
 { note } for all exchange, re-exchange, and all costs, damages and in-
 terest, present and to come, for want of { acceptance } of the
 { payment }

said { bill }
 { note }

All which is by these presents attested by the signature of
 the said (*the witness*) and by my hand and seal.

(Protested in duplicate)

(*Signature of the witness*)

(*Signature and seal of the J.P.*)

55 V., c. 33, sch., form J.

CHAPTER 120.**An Act respecting Interest.**

1. Short Title.—This Act may be cited as the Interest Act.

RATE OF INTEREST.

2. No Restriction as to Rate Except as Provided by Statute.
—Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon. R. S., c. 127, s. 1.

3. Except as to liabilities existing immediately before the seventh day of July, one thousand nine hundred, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be **five per centum per annum**. R. S., c. 127, s. 2; 63-64 V., c. 29, s. 1.

4. Except as to mortgages on real estate, **whenever any interest is**, by the terms of any written or printed contract, whether under seal or not, **made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per centum per annum shall be chargeable**, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which such other rate or percentage is equivalent. 60-61 V., c. 8, ss. 2 and 4; 63-64 V., c. 29, s. 1.

5. If any Sum is Paid on Account of any interest not chargeable, payable or recoverable under the last preceding section, **such sum may be recovered back or deducted from any principal or interest payable under such contract.** 60-61 V., c. 8, s. 3.

INTEREST ON MONEYS SECURED BY MORTGAGE ON REAL ESTATE.

6. No Interest Recoverable.—Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half yearly, not in advance. R.S., c. 127, s. 3.

7. No Rate Recoverable Beyond that so Stated.—Whenever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shown in such statement. R.S., c. 127, s. 4.

8. No Fine or Penalty or Rate of Interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage of real estate, which has the effect of increasing the charge on any such arrears beyond the rate of interest payable on principal money not in arrear: Provided that nothing in this section contained shall have the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrear. R. S., c. 127, s. 5.

9. Overcharge may be Recovered Back.—If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under the three sections last preceding, such sum may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal. R. S., c. 127, s. 6.

10. No Further Interest Payable After Five Years.—Whenever any principal money or interest secured by mort-

gage of real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem the mortgage tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under the provisions of the four sections last preceding, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage: Provided that nothing contained in this section shall apply to any mortgage upon real estate given by a joint stock company or other corporation, nor to any debenture issued by any such company or corporation, for the payment of which security has been given by way of mortgage on real estate. R. S., c. 127, s. 7; 53 V., c. 34, s. 1.

11. Apply to Mortgages Since July 1, 1880.—The provisions of the five sections last preceding shall apply only to moneys so secured by mortgage executed after the first day of July, one thousand eight hundred and eighty. R. S., c. 127, s. 8.

BRITISH COLUMBIA, SASKATCHEWAN AND ALBERTA AND THE TERRITORIES.

12. Application.—The three sections next following apply to the provinces of British Columbia, Saskatchewan and Alberta and to the Northwest Territories and the Yukon Territory only. 52 V., c. 31, s. 1; 57-58 V., c. 22, s. 1.

13. Every judgment debt shall bear interest at the rate of five per centum per annum until it is satisfied. 52 V., c. 31, s. 2; 57-58 V., c. 22, s. 2; 63-64 V., c. 29, s. 1.

14. From What Time Calculated.—Unless it is otherwise ordered by the court, such interest shall be calculated from the time of the rendering of the verdict or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in

the same court or in appeal. 52 V., c. 31, s. 3; 57-58 V., c. 22, s. 3.

15. Judgment Debt Defined.—Any sum of money or any costs, charges or expenses made payable by or under any judgment, decree, rule or order of any court whatsoever in any civil proceeding shall for the purposes of this Act be deemed to be a judgment debt. 52 V., c. 31, s. 4; 57-58 V., c. 22, s. 4.

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ANNOTATIONS.

CHAPTER 119.

Bills of Exchange, Cheques, and Promissory Notes.

INTERPRETATION.

Section 2 (a) "Acceptance." See ss. 35 to 39 inclusive for a definition of the nature and conditions of "acceptance." See clause (f) *infra* and s. 40 for the meaning and requisites of "delivery" as used in this clause. See s. 39 with reference to "notice" by drawee to person entitled to the bill of his acceptance.

Section 2 (b) "Action." The following sections contain provisions respecting actions: 49, 58, 93, 151 and 183. This clause and clause (k) deal with procedure in provincial Courts, but the Dominion has the right to so interfere. See *Tennant v. Union Bank of Canada* (1894) A. C. 31, and *Grand Trunk Ry. Co. v. Attorney-General for Canada* (1906), 23 L. T. R. 40.

Section 2 (d) "Bearer." See s. 21. "Bearer" is a "holder." See clause (g) *infra*.

Section 2 (e). As to "Bill," see ss. 17 and 165, and notes thereon. For "Note," see Part IV.

Section 2 (f). "Delivery" . . . from one person to another. See the definition of "person" in the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (20). And see "delivery" in ss. 40 and 41 of the Act.

Section 2 (g). "Holder." Every "bearer" of a bill within the meaning of the definition in clause (d) of this section is the "holder" of it. See *Howard v. Godard* (1860), 9 N. B. R. 452.

Section 2 (d). An indorsement must be an assignment by somebody who has a right to assign, and if made by a stranger is no indorsement at all: *Tai Yoke v. Bank* (1893), 5 B. C. R. 21.

Section 2 (j). See definition of "valuable consideration" in s. 53.

Section 2 (l). See s. 43, *infra*, as to "non-juridical days."

PART I.

Section 3. "Good faith" as attempted to be defined by this section, apparently means absence of fraud. "Bad faith" and "fraud" are synonymous: Per Colley, C.J., in *Hilgenberg v. Northup*, 33 N. E. Rep. at p. 787. It is taken from s. 90 of the Imperial Act of 1882 (45 & 46 Vict. c. 61). Cf. ss. 30, 58, 172 and 175 *hereof*.

Section 5. Before the Act it was decided in Ontario that an instrument in the form of a note signed and sealed was not a promissory note, see *Wilson v. Gates* (1858) 16 U. C. Q. B. 278. See also *Merritt v. Maxwell* (1856) 14 U. C. Q. B. 50; *Merchants Bank v. U. E. Club* (1879), 44 U. C. Q. B. 468. But see as to the liability of a municipal corporation on a promissory note, *Armstrong v. Garrafraxa* (1879) 44 U. C. Q. B. 515.

Section 6. "Non-business days" are the non-juridical days specifically mentioned in s. 43.

Section 7. The express provisions of the Act referring to Cheques are found in Part III.

Section 8. See annotations to ss. 76 (a), 76 (c) and (d), and 91 of the Bank Act, c. 29 *ante*.

Section 10. The "law merchant." "The law merchant, as it is a part of the law of nature and nations, is universal, and one and the same in all countries in the world. . . . There is not one law in England, another in France, another in Spain, another in Germany, but the same rules of reason and the like proceedings of the law mer-

chant are observed in every nation:" Sir John Davies, "Concerning Impositions" (1656) c. 10. "In Edward I.'s day the 'lex mercatoria' was already conceived as a body of law differing in some respects from the Common Law. Within certain limits it was for the merchants themselves to declare this law. . . . Probably in some respects it took a more liberal and modern view of contractual obligations than that which was taken by the Common Law:" Professor Maitland, "Fair of St. Ives, Introd. p. 132 (Sel. Soc. Pub. vol. ii.). "The law merchant is a system of equity, founded on the rules of equity, and governed in all its parts by plain justice and good faith:" Per Buller, J., in *Master v. Miller*, 4 T. R. 320. "Some parts of it were undoubtedly borrowed from the Roman law; but when, by whom, and in what circumstances, it is not always possible to say. Never the law of this country, the Roman law was often referred to as a general body of doctrine, suited to supply the deficiencies of the law of every civilized country. The writers on mercantile law, here and on the Continent, sought in Roman law solutions for difficult and novel problems, and often found them:" Smith's *Mercantile Law* (10th ed.), Intro. lxxv. And see per Davies, J., in *Bank of Montreal v. The King*, 38 S. C. R., as to the application of the law merchant to a case not provided for by the Act.

Sections 14 and 15. The main provision respecting a note forming part of the purchase money of a patent right, comes originally from the Act 47 Vict. c. 38. The provision in s. 14, s.-s. 2, as to the effect of the omission of the words "given for a patent right" was introduced by 53 Vict. c. 33, s. 30. Prior to the latter enactment, it was held that the omission of such words did not render a note void as between the maker and the payee, and that the intention of the Act was to give the indorsee or transferee notice, and to put him in the position of the payee as to any defence which the maker might have against a claim by the payee: *Girvin v. Burke*, 19 Ont. R. 204. When this case was decided the bill which afterwards became the Bills and Notes Act of 1890, was still before Parliament. (See Senate Debates, 1890, pp. 464, 465.)

Jones v. Martin (1892) 19 Ont. W. R. 502, decided that an indorser for value of a bill of exchange who took a note given for a patent without those words, with knowledge of the consideration, could not recover. See also *Craig v. Sumner* (1895) 24 S. C. R. 218.

See s. 16 as to penalty for issuing or transferring note, the consideration of which, in whole or in part is the price of a grant of a patent right, without words "Given for a patent right" printed or written across the face thereof.

PART II

BILLS OF EXCHANGE.

Section 17. "An unconditional order." Before the Act the following order was held to constitute a valid bill:—"Mr. Warren, please let the bearer, William Tuke, have the amount of £10, and you will oblige me, B. B. Mitchell:" *Reg. v. Tuke* (1858) 17 U. C. Q. B. 296. But, in Quebec, an open letter from one government officer to another, desiring the latter to pay plaintiff a certain sum of money due him by the government, was held not to be a valid bill: *McLean v. Ross* (1816), 3 Rev. de Leg. 454. See also *Jacques Cartier Bank v. The Queen* (1895) 25 S. C. R. 84.

"In writing": See the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (31), where "writing" is extended to include words "printed, painted, engraved, lithographed, or otherwise traced or copied."

Parol evidence is not admissible to vary the obligations of parties as appearing upon the negotiable instrument itself: *Hart v. Davy* (1843), 1 U. C. Q. B. 218; *Hall v. Francis* (1851) 4 U. C. C. P. 210; *Moore v. Sullivan* (1862), 21 U. C. Q. B. 445; *Decelles v. Samoisette* (1888) M. L. R. 4 S. C. 361; *Taylor v. McFarlane* (1878) 12 N. S. R. 190; *Smith v. Squires* (1901), 13 Man. R. 360; *Emerson v. Erwin* (1903), 10 B. C. R. 101; *Moore v. Grosvenor* (1890), 30 N. B. R. 221; *Conley v. Ashley* (1902) 1 Ont. W. R. 204. But parol evidence is admissible to shew real date of instrument

and a statement to date, the amount to be paid, and that the receipt was not additional, etc., of the paper was a consideration for the instrument." *North v. Lawrence* (1891), 14 L. C. J. 22; *Waller v. South* (1891), 20 N. S. R. 509, 16 S. C. R. 111; *Lindell v. Zwicker* (1899), 18 N. S. R. 100. Note also *Reid v. Reid* (1892), 20 N. S. R. 509, 16 S. C. R. 111, and *Reid v. Reid* (1892), 20 N. S. R. 509, 16 S. C. R. 111, as to binding effect of counterpaneled agreement in writing.

"Addressed by one person to another." See definition of "person" in Interpretation Act, R. S. C., 1906, c. 1, s. 31 (20).

An instrument otherwise regular in form, but not addressed to any drawee is not a bill of exchange: See *Forward v. Thompson* (1854), 12 U. C. Q. B. 103; *McPherson v. Johnston* (1891) 3 B. C. R. 465.

Nor is a warrant signed by a committee of a city council, and addressed to the city treasurer, because drawer and drawee represent the same person: *Charlebois v. City of Montreal* (1898), Q. R. 15 S. C. 96.

A departmental "letter of credit" was held not to be a bill of exchange in *Jacques Cartier Bank v. The Queen*, 25 S. C. R. 81.

"Signed." Signature by a cross or mark is sufficient: *Noad v. Chateauvert* (1846), 1 Rev. de Leg. 229; *Remillard v. Moisan* (1899) Q. R. 15 S. C. 622. But see *Jones v. Hart* (1819) 2 Rev. de Leg. 58.

A signature in the following form: "A. & Co. by A. Junr.," *prima facie* imports that A. signs the instrument for, and not as one of, the firm: *Dowling v. Eastwood* (1846) 3 U. C. Q. B. 376.

"On demand, or at a fixed or determinable future time." In the recent case of *Laforest v. Babineau* (37 S. C. R. 521, affirming 37 N. B. R. 156), the following was held a good promissory note:—

"Edmundston, N.B., July 12, 1899.
\$1,200.

"Received from the Reverend N. P. Babineau, the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per

annum, upon production of this receipt and after three months' notice. (Signed) Fred Laforest."

See ss. 23 and 24 of the Act.

"A sum certain in money." "Money . . . is not necessarily either gold, silver, or paper. It is just what the people of the country, where the instrument is made, choose to treat as money; in other words, as currency. . . . It may be payable in coins, such as guineas, ducats, doubloons, crowns, or dollars, or in the known currency of the country, as in pounds sterling, livres, tournoises, francs, florins, etc., for in all these and in the like cases, the sum of money to be paid is fixed by the par of exchange, or the known denomination of the currency with reference to the par." Per Harrison, C.J., in *Third National Bank of Chicago v. Cosby* (1877), 11 U. C. Q. B. at p. 408.

Held, that a promissory note made in Canada and payable in the United States, and in the currency thereof, was a good promissory note: *Ibid.* "Currency means United States currency," when note payable in United States: *Wallace v. Souther* (1889), 16 S. C. R. 717. See also *St. Stephen Ry. Co. v. Black* (1870), 13 N. B. R. 139; *Dunn v. Allen* (1884), 24 N. B. R. 1; *Northwestern National Bank v. Jarvis* (1883), 2 Man. R. 53.

Quare: Whether an instrument purporting to be a bill of exchange, payable in New York, "with current funds," if it mean other than lawful money of the United States, is a bill of exchange? *Stephens v. Berry*, 15 U. C. C. P. 518.

The following: "Ten days after date, we promise to pay to M. N. \$85 15¢, for value received," upon which when given was endorsed: "It is agreed that the note is to be paid in lawful money, with interest on the same, having three years to run," held not to be a contract between the parties: *Newson v. Lawrence*, 5 U. C. Q. B. 359. "Toronto, 14th May, 1858. Six months after date, we promise to pay to J. B., or order, \$100 (one hundred), N. J., W. W. B., E. W. D. The above note is to be paid in merchantable lumber, to be delivered in Toronto at cash price, and an additional quantity of lumber sufficient to pay the freight is to be sent in. If not so paid within the time, then the same

is to be paid in cash." All this was on the face of the instrument. Held, not a valid note: *Boulton v. Jones* (1860), 19 U. C. Q. B. 517. But see *McKinnon v. Campbell*, 6 U. C. L. J. 58.

A promise to pay in "cash or mortgage upon real estate," not being an absolute promise to pay money, is not a note; nor does it become so by the maker's election to pay in cash: *Going v. Barwick* (1857) 16 U. C. Q. B. 45. See also *Downs v. McNamara* (1846), 3 U. C. Q. B. 276; *McRobbie v. Torrance* (1888) 5 Man. R. 114; *Newhorn v. Lawrence* (1848) 5 U. C. Q. B. 359.

A promise to pay a certain sum "with exchange on New York," was held not to constitute a good note, as the amount was rendered uncertain by the uncertainty of exchange: *Fahnestock v. Palmer*, 9 U. C. C. P. 172; and see *Saxton v. Stevenson* (1871), 23 U. C. C. P. 503.

"To the order of a specified person." "Person" includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends: Interpretation Act (R. S. C., 1906, c. 1), s. 34, s.-s. 20, annotated ante.

"Or to bearer." See note to s. 21 (3) *infra*.

Section 17, s.-s. 2 ("Act to be done in addition to payment"). In the following cases negotiable instruments were adjudged invalid because of their ordering or promising some act to be done in addition to the payment of money: *Côté v. Lemieux* (1859), 9 L. C. R. 221; *Melville v. Bedell* (1832), *Stevens, N. B. Digest*, p. 216; *Gillin v. Cutler* (1857) 1 L. C. J. 277; *Sutherland v. Patterson*, 4 Ont. R. 565; *Hall v. Merriek* (1877) 40 U. C. Q. B. 566; *Dominion Bank v. Wiggins* (1894) 21 Ont. A. R. 275; *Prescott v. Garland* (1897) 34 N. B. R. 291; *Bank of Hamilton v. Gillies* (1899) 12 Man. R. 495; *Imperial Bank v. Bromish* (1895) 16 C. L. T. (Occ. N.) 21.

The provisions of this sub-section are expressly modified by the Act in the case of promissory notes. See s. 176, s.-s. 3 and notes *infra*.

Section 17, s.-s. 3 (Unconditional order—Particular fund). See the following cases where instruments held invalid for designating particular fund: *Fullerton v. Chapman*

(1871) 8 N. S. R. 470; *Brett v. Lovett* (1871) 8 N. S. 8. 472; *Ockerman v. Blacklock* (1862) 12 U. C. C. P. 362; *Perth v. McGregor* (1862) 21 U. C. Q. B. 459; *Bank of B. N. A. v. Gibson* (1892) 21 Ont. R. 613. But see *Chesney v. St. John* (1879) 4 Ont. A. R. 150; *Wood v. Shaw* (1858) 3 L. C. J. 169.

Section 18 (Payable on contingency. See *Dooly v. Ryerson* (1874) 1 Q. L. R. 219; *Duchaine v. Maguire* (1882) 8 Q. L. R. 295; *Wood v. Higginbottom* (1813) 2 Rev. de Leg. 28; *Russell v. Wells* (1848) 5 U. C. O. S. 725; *Garner v. Hayes* (1884) 10 Ont. A. R. 21; *Thomson v. Huggins* (1896) 23 Ont. A. R. 191.

Section 19 (Payee, drawer or drawee). See *Golding v. Waterhouse*, 16 N. B. R. 313.

Section 19, s.-s. 2 (Alternative payees). See note to following sub-section.

Section 19, s.-s. 3 (Holder of office). See Imperial Act, s. 7, s.-s. 2. In the 6th edition of *Chalmers on Bills of Exchange*, at p. 21, it is said:—"This sub-section materially alters the law. Before its enactment a bill drawn payable to the 'treasurer for the time being' of a society was void for uncertainty; so, too, was a bill drawn payable 'to the order of T. Smith or S. Jones,' unless there was apparent community of interest." The cases are conflicting in Canada, but it is not useful to collect them in view of the clear meaning of the text.

Section 20 (Drawee to be named). See note to s. 26, *infra*.

"Reasonable certainty." See *Peto v. Reynolds* (1854) 9 Exch. 410 and 11 Exch. 418. (Cf. *Goirand's French Code of Commerce* (2nd ed.), p. 180 et seq. Cf. *Alexander v. Sizer* (1869) L. R. 4 Ex. at p. 105.

Section 21 ("Transfer"). The words "non-negotiable and given as security," written on the face of the note, deprives it of its essential characteristic as a promissory note, and it becomes a mere contract of suretyship: *Davis v. Rob-*
inson, Q. R. 6 Q. B. 261.

In an Ontario case, decided before the passage of the Bills of Exchange Act, 1892, it was held that although the note was not negotiable, the payee was entitled to recover from the maker. It was shown that the note was intended by the maker to have been made negotiable, and was issued by him as such, but, by mistake or inadvertence, it was not expressed to be payable to the order of the payee: *Harvey v. Bank of Hamilton*, 16 S. C. R. 714. Cf. Goirand's *French Code of Commerce* (2nd ed.), p. 181, et seq.

Section 21, s.s. 3 (Payable to bearer). A check payable to C. M. & S., or bearer, was indorsed by them, and cashed for deposit to their credit in a bank. The clerk, instead of depositing it, drew the funds, the teller not observing the special indorsement. Held, that as the "bearer" (the clerk) was entitled to receive payment, the bank which paid was not liable: *Exchange Bank v. Quebec Bank* (1890), M. L. R. 6 S. C. 10. See, however, s. 68, clause 2, which would seem to make such an indorsement a restrictive one.

Section 21, s.s. 4 ("Reasonable certainty"). See note to s. 20, *supra*.

Section 21, s.s. 5 ("Fictitious person"). Cf. s. 1, s. 3 of the Imperial Act. The draughtsman of that Act, Chalmers (*Bills of Exchange*, 6th ed., p. 22), says: "This subsection was inserted in committee in place of a clause working out in detail the effect of the cases." See the ruling case upon the interpretation of the section: *Bank of England v. Vagliano Bros.*, [1891] A. C. 101, reversing s. c. in 23 Q. B. D. 243. See also the discussion of the case in *Law Quarterly Rev.*, vol. 7, p. 219, and in vol. 10, p. 40. See also the Canadian case of *London Life Insurance Co. v. Molsons Bank*, 8 Ont. L. R. 238.

Section 22 (Payable to order). This provision changes the law in Canada as expounded by such cases as *West v. Brown*, 1 U. C. Q. B. 290; *Harvey v. Bank of Hamilton*, 16 S. C. R. 714; *Jones v. Whitty*, 9 L. C. R. 191; *McCorkill v. Barrabé*, M. L. R. 1 S. C. 319. See *Mallette v. Sutcliffe*,

Q. R. 5 S. C. 169; *Desy v. Day*, Q. R. 12 S. C. 183; *Ward v. Quebec Bank*, Q. R. 3 Q. B. 132.

Section 22, s. 4. See *Myers v. Wilkins*, 6 U. C. Q. B. 421; *Newton v. Allen*, 2 Rev. de Leg. 29.

Section 23 (Payable on demand). Demand bills are not entitled to day of grace: See s. 42 of the Act.

Section 24 (a) (Sight bills). Sight bills are entitled to days of grace: See s. 42 of the Act.

Section 24 (b) (Specified event). See *Hogg v. Marsh*, 5 U. C. Q. B. 319; *Massey Mig. Co. v. Perrin*, 8 Man. R. 451.

Section 25 (Inland Bill). These provisions do away with the rule observed in *McLellan v. McLellan*, 11 U. C. C. P. 100, that a bill or note made in one province and payable in another is to be treated as foreign. They also override any pre-existing provincial legislation to the contrary. Cf. as to promissory note, s. 113 *infra*.

Section 25, s. 8. 1 (Presumption of inland character). The advantage to the holder under this provision is that an inland bill need not, except in Quebec, be protested in due course. See s. 113 *infra*.

Section 26 (Drawer and drawee). In such a case notice of dishonour need not be given as regards the drawer. See ss. 92 and 101. ("Fictitious person"). Cf. note to s. 24, s. 8, 5. See the English case of *Stewart v. Bank*, 2 Stark. 225.

Section 27 (Defects not fatal). (a) "Date"—Presumed to be dated on day made: See English case of *Ilague v. French*, 3 B. & P. 173. Proof of date by parol: See English case of *Davis v. Jones*, 17 C. B. 625.

(b) "Value received"—Effect of: *Lacombe v. Franklin County Bank*, 8 L. C. R. 328. But where these words are used, parol evidence is admissible to prove contrary: *Davis v. McSherry*, 7 U. C. Q. B. 490; *Baxter v. Bilo-deau*, 9 Q. L. R. 268.

(c) Place payable: See s. 93, *infra*, and notes.

(d) Irregular date—"Post-dated": See *Forster v. Mackreth*, 1 L. R. 2 Ex. 163; *Royal Bank v. Tottenham*, [1894] 2 Q. B. 115.

"Sunday." See *Begbie v. Levi*, 1 Cr. & J. 180; *Houlston v. Parsons*, 9 U. C. Q. B. 681; *Crombie v. Overmoltzer*, 11 U. C. Q. B. 55.

Section 28 ("Sum certain"). See notes to s. 17 *supra*.

(a) ("With interest"). See R. S. C., 1906, s. 120, R. S. C., 1906, c. 122. And see *Young v. Fluke*, 15 U. C. C. P. 360.

(b) ("Stated instalments"). See *Bercon v. Central Bank*, 10 N. B. R. 493; *McQueen v. McQueen*, 9 U. C. Q. B. 536; *Clearihue v. Morris*, 2 Rev. de Leg. 30.

(d) ("With exchange"). See *Third National Bank of Chicago v. Crosby*, 13 U. C. Q. B. 58. See also note to s. 17 *supra*.

Section 28, s.-s. 3 (Date from which interest runs). See *Howland v. Jennings*, 11 U. C. C. P. 272; *Dechaunt v. Pominville*, 6 L. C. J. 88.

(Interest after maturity). See s. 134, *infra*, and notes.

Section 31 (Inchoate instruments). Liability of maker: See *McInnes v. Milton*, 10 U. C. Q. B. 389; *Ford v. Auger*, 15 U. C. J. 296; *Bank of Nova Scotia v. LePage*, M. L. J. 6 S. C. 331; *Leeson v. Godin*, 5 B. C. R. 151; *Bank of Columbia L. & I. Agency v. Ellis*, 6 B. C. R. 89; *Canadian Safety Co. v. Porter*, 7 N. B. R. 270.

Liability of indorser: See *Sandford v. Ross*, 6 U. C. O. S. 104; *Rossin v. McCarty*, 7 U. C. Q. B. 100; *Dorwin v. Thompson*, 13 L. C. J. 262.

(Note obtained by fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it, the signer was held not liable: *Banque Jacques Cartier v. Lescard*, 13 Q. L. R. 39. But see the cases cited under following section.

Section 2 (Effect in due course). As to exemption from restriction as to "time" and "authority" in next preceding section: See *Hanscombe v. Colwell*, 15 U. C. Q. B. 12; *Merchants Bank v. Green*, 6 Man. L. R. 302; *East National Bank v. McLean*, 16 Man. R. 32.

Section 3 (Effect in case of need). By Art. 200 C. C. L. C. the "effect in case of need" retained an person) was amended as follows: "If the bill is accepted, and there is a drawee or person, presented, it must be made in due manner in due time."

ACCEPTANCE AND INTERPRETATION.

Section 35 (Acceptance). See *Madden v. Cox*, 5 Ont. A. R. 173; *Campbell v. Mackay*, 21 N. S. R. 401; *Quebec Bank v. Munn*, 5 Man. R. 17; *Laing v. Taylor*, 26 U. C. C. P. 116; *Robertson v. Glass*, 20 U. C. C. P. 250; *Foster v. Geddes*, 14 U. C. Q. B. 239; *Bank of Montreal v. De Latre*, 5 U. C. Q. B. 362; *Bank of Montreal v. Smart*, 10 U. C. C. P. 15; *McDougall v. McLean*, 1 Terr. L. R. 450.

Section 36 (a) (Acceptance in writing). Must be on the bill. But see *Bank of Montreal v. Thomas*, 16 Ont. R. 503, and compare *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 241.

Section 38 (Character of acceptance):

(a) General acceptance: See *Commercial Bank v. Johnston*, 2 U. C. Q. B. 126; *Bank of Upper Canada v. Parsons*, 3 U. C. Q. B. 383; and compare *Fanshawe v. Peet*, 26 L. J. N. S. Ex. 314.

(c) Qualified acceptance: See *Milne v. Prest*, 4 Camp. 393; *Smith v. Virtue*, 30 L. J. C. P. 56; *Julian v. Shobrooke*, 2 Wils. 9.

Section 38, s.-s. 3 (a). Conditional acceptance: See *Bradbury v. Oliver*, 5 U. C. O. S. 703; *McLean v. Shields*, 1 Man. R. 218; *Potters v. Taylor*, 20 N. S. R. 362; *Dufresne v. Jacques Cartier Bldg. Soc.*, 5 R. L. 235; *Ontario Bank v. McArthur*, 5 Man. R. 381.

Section 39 (Acceptance complete). See *Brown v. Howland*, 9 Ont. R. 48; 15 Ont. A. R. 750.

DELIVERY.

Section 40 (b) (Conditional delivery). See *Ontario Bank v. Young*, 2 Ont. L. R. 761; *Chandler v. Beckwith*, 2 N. B. R. 423. And see *Commercial Bank of Windsor v. Morrison*, 32 S. C. R. 98; *Jenks v. Doran*, 5 Ont. A. R. 558; *First National Bank v. McLean*, 16 Man. L. R. 32.

COMPUTATION OF TIME, ETC.

Section 46 (Due date). See *Drapeau v. Pominville*, Q. R. 11 S. C. 326, where it was held that a promissory note dated 7th November, 1895, and payable "21st November, next," was to be taken as payable on the 21st November, 1896, and not on that date in 1895.

CAPACITY AND AUTHORITY OF PARTIES.

Section 47 (Capacity). See s. 30, Interpretation Act, as to powers of federal corporations. As to provincial corporations, *Maclaren on Bills*, 3rd ed., 125, gives list of general Acts of respective provinces, and at page 127 cases as to powers thereunder.

Unless power is expressly conferred by will, executor cannot pledge credit of estate by indorsing accommodation notes to establish or advance the interests of beneficiaries: *Lionais v. Molsons Bank*, 10 S. C. 526.

Section 48 (Effect of disability). Holder of note payable to a society or bearer may recover from maker though society could not indorse or transfer notes: *Hammond v. Small*, 16 U. C. Q. B. 371.

Note made by infant indorsed by his father, who was of unsound mind and unable to understand what he was doing. Indorser received no consideration and person to whom note was given was not aware of his condition. Indorser's estate not liable. *In re James*, 9 Ont. P. R. 88.

Section 4 (Forgery, etc.). Forgery of note cannot be ratified: *Montreal Bank of Canada v. Lucas*, 18 S. C. 701, affg. 10 Ont. A. R. 566.

Parties whose names were forged as makers of a note on receiving notice from the bank discounting it, that it well had due on a day named, and asking them to provide for it, held estopped from denying their signature when they did not at once notify the bank, telephone or telegraph, that it was forged: *Ewing v. Dominion Bank*, 35 S. C. 133.

Bill drawn by a company to their own order was paid by acceptor who had previously discovered that the name of the company was forged as drawer and also as indorser. Held, that though acceptor was estopped from denying the signature of the company as drawer, he was not estopped from denying their signature as indorser and could recover the amount of the bill from the bank which discounted it: *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. A. R. 533. And see *Rex v. Bank of Montreal*, 10 Ont. L. R. 117; 11 Ont. L. R. 595, affirmed by Sup. Court, 19th February, 1907.

Acceptor not barred by delay when there was no party to the bill against whom the bank could have recourse: *Ryan v. Bank of Montreal*, *supra*.

President of company without authority from directors made a note signed "S. President" with seal attached, and had it discounted by private bankers. S. was a defaulter to company of more than the amount of the note. Held, company could not repudiate liability on note and also recover amount of same from bankers: *Bridgewater Cheese Factory Co. v. Murphy*, 26 O. R. 327; 23 Ont. A. R. 66; 26 S. C. 443.

Section 51 (Procuration). Acceptance or indorsement "per pro." puts taker on inquiry as to extent of acceptor's or indorser's authority: *Bryant v. Banque du Peuple* [1893] A. C. 170.

If he has authority abuse of it does not affect bona fide holder for value: *Ib.*

Section 52 (Representative capacity). Bill drawn by "A. Agt." on and accepted by principal. Drawer personally liable: *Reid v. McChesney*, 8 U. C. C. P. 50.

Also assigned to partnership, without authority to make notes for the firm, who signed notes with "assignment" after his name: *Boyd v. Mortimer*, 6 O. R. 290.

Inspector of insurance company who signed note "A. Seamer, Inspector" for amount of policy holder's claim for loss not personally received: *Hazlett v. Squier*, 12 U. C. Q. B. 165.

But where note was signed "The Glasgow O. L. Co." individual members of the company were not liable: *Fairchild v. Ferguson*, 21 S. C. 381. And see *Brown v. Howland*, 15 Ont. A. R. 15, affirming 9 O. R. 48; *Madden v. Cox*, 5 Ont. A. R. 113, affirming 11 U. C. Q. B. 542.

CONSIDERATION.

Sections under this head apply also to promissory notes. See s. 186.

Section 53 (Valuable). Note to secure amount of fraudulent preference from an insolvent to a particular creditor is wholly void: *Brigham v. Banque Jacques-Cartier*, 30 S. C. 429.

Joint and several note of partners given as collateral to mortgage. Partnership being dissolved partner continuing business received discharge of mortgage but without paying debt. Other partner not liable on note unless holder could convey mortgaged lands to him on payment: *Allison v. McDonald*, 23 S. C. 635.

Plea that note was given in consideration of forbearance to proceed with prosecution for felony. Held, that particular nature of charge should be proved: *Henry v. Little*, 11 U. C. Q. B. 296. See *Toponce v. Martin*, 38 U. C. Q. B. 411.

Machinery sold, part of price being paid in cash, balance by note, property not to pass until balance was paid. Before note was paid machinery was destroyed by fire. Held, purchaser was liable on note: *Goldie & McCullough Co. v. Harper*, 31 O. R. 281.

Partial failure of consideration no defence: *Dixon v. Paul*, 4 O. S. (U.C.) 327; *Hill v. Ryan*, 8 U. C. Q. B. 113. And see *Kilroy v. Simkins*, 26 U. C. C. P. 281; *Primeau v. Mouchelin*, 15 Man. 360.

of that consideration proved less beneficial than represented: *Dutton v. Lane*, 1 O. S. 15.

But damages may be reduced for part the benefit: *McGregor v. Bishop*, 11 O. R. 7; *O'Brien v. Leint*, 18 U. C. Q. B. 211.

A pre-existing debt is a good consideration though a mortgage on real estate is given to secure same: *Bank of Upper Canada v. Bartlett*, 12 U. C. C. P. 238.

Pre-existing debt the same as new consideration: *Evans v. Morey*, 21 U. C. Q. B. 511.

Agreement not to proceed with prosecution for permitting gambling in tavern an illegal consideration: *Dwyer v. Thsworth*, 9 U. C. Q. B. 539. And see *Doyle v. Carroll*, 28 U. C. C. P. 218; *Bell v. Riddell*, 10 Ont. A. R. 514.

Antecedent debt good consideration for note transferred as collateral security, and may be enforced by bona fide holder for value though void for illegality as between maker and payee: *Canadian Bank of Commerce v. Gurley*, 30 U. C. C. P. 583.

Notes given in payment of subscription to stock in proposed company the objects and purposes of which, through no fault of maker, were never carried out, and company never formed. Held, a total failure of consideration: maker not liable on notes and entitled to recover back amount of one which he had paid: *Bullion Mining Co. v. Cartwright*, 10 Ont. L. R. 438.

No action lies on note or renewal given to raise funds to promote election in Quebec: *St. Pierre v. L'Euyer*, Q. R. 23 S. C. 495.

There was no consideration for a note given in payment of premium on an insurance policy on which the insurers would not be liable, as insured was not owner of the property covered though he had believed he was: *Mutual Assur. Co. v. LeMay*, Q. R. 12 S. C. 232.

After debtor has compromised with a creditor his natural obligation to pay balance of debt is good consideration for a note to obtain further credit: *Bédard v. Chaput*, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: *Proctor v. Parker*, 12 Man. 528. And see *McGregor v. McKenzie*, 30 N. S. 211, as to forbearance to sue.

Section 55 (Accommodation). Two makers of note, one signing for other's accommodation. After maturity third party signed it. Held, that latter was additional maker and note was materially altered so as to discharge accommodation maker: *Carleton v. Smith*, 21 Ont. A. R. 392, reversing 28 O. R. 175.

Section 56 (Holder in due course). Indorsement of note in blank and maker's name afterwards signed without authority. Indorsee suing must prove that he is *bonâ fide* holder for value: *Hansecome v. Cotton*, 15 U. C. Q. B. 12; 16 U. C. Q. B. 98.

Holder of notes transferred by payee as collateral security against future liability for the latter can collect them at maturity though liability has not arisen: *Ross v. Tyson*, 19 U. C. C. P. 294.

Note indorsed in blank deposited in bank as collateral security for an account. Name of bank was stamped over indorser's name, and account having been transferred to another bank the name of latter was stamped over that of the other, whose manager initialled the transfer. Held, that second bank was holder in due course of the note: *Sovereign Bank v. Gordon*, 9 Ont. L. R. 116. See also *Gauthier v. Reinhardt*, Q. R. 26 S. C. 131.

Section 57 (Subsequent holder). Indorsee without value can recover on a bill or note if any intermediate party is a holder for value: *Wood v. Ross*, 8 U. C. C. P. 299.

Holder in good faith, for value and without notice, cannot recover against maker of note where evidence does not clearly shew that he signed it and establishes that if he did it was in the belief, induced by false representations of agent of payee, that he was signing a petition to Government: *Alloway v. Hrabî*, 14 Man. 627. And see *Banque Jacques-Cartier v. Lalonde*, Q. R. 20 S. C. 43.

Section 58 (Presumption of value). Bank clerk who signs note for deposits in customers' accounts in which he has no personal interest, being coerced by the manager from fears of dismissal and criminal prosecution, held not liable thereon: *Western Bank of Canada v. McGill*, 32 S. C. 581.

Two defenses of paying value, one partial where bona fide holder, the other total where bona fide holder of accommodation paper: *Merchants National Bank v. Ontario Coal Co.*, 16 Ont. P. R. 87.

Nor of note indorsed in blank: *Lodgeway v. Dandereau*, Q. R. 17 S. C. 116.

Note given by insolvent to creditor who makes it a condition of signing deed of composition is void as between the parties, but good in hands of bona fide holder for value without notice: *Bellemare v. Gray*, Q. R. 16 S. C. 581, affirmed in review. *Fisher v. Genser*, Q. R. 15 S. C. 605.

The same as to cheque given for gambling debt: *Dion v. Lachance*, Q. R. 14 S. C. 77.

After a debtor has compromised with his creditors obligation to pay balance of one of such debts is good consideration for a note given to the creditor for further credit: *Bédard v. Chaput*, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: *Proctor v. Parker*, 12 Man. 528.

NEGOTIATION.

Section 60 (By transfer). A bill though not payable to order is negotiable and may be transferred by indorsement unless the contrary is expressed: *Désy v. Daly*, Q. R. 12 S. C. 183.

Section 61 (Without indorsement). See *Dupuis v. Marsan*, 17 L. C. J. 42; *Guerin v. Orr*, 5 L. N. 379; *Contu v. Rafferty*, M. L. R. 7 S. C. 116; *Vandal v. Douville*, 20 R. L. 305.

Section 62 (Indorsing). Indorsement may be on any part of bill: *Carrique v. Beaty*, 28 O. R. 175.

Section 65 (Order of indorsements). Agreement that indorsers shall not be liable in order: *Elder v. Kelly*, 8 U. C. Q. B. 240; *McLean v. Garner*, 11 N. S. 437; *Loydell v. Daigle*, 2 Tor. 129; *Desclamps v. Leger*, M. L. R. 3 S. C. 1.

Section 66 (Conditional indorsement). No agreement without understanding that it should only be payable on happening of a certain condition does not bind indorser if condition is not fulfilled: *Commercial Bank of Windsor v. Morrison*, 32 S. C. 98. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Section 68 (Restrictive indorsement). See *Barthe v. Armstrong*, 5 R. L. 243; *Munro v. Cox*, 30 U. C. Q. B. 363; *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

Section 70 (Overdue bill). Where agent of holder disposes of overdue note without authority, though for good consideration, transferee obtains no title as against principal: *West v. MacInnes*, 23 U. C. Q. B. 357.

Valid agreement to give time an equity attaching to bill as against person taking it after maturity: *Britton v. Fisher*, 26 U. C. Q. B. 338. Also agreement not to negotiate after maturity: *Grant v. Winstanley*, 21 U. C. C. P. 257.

Bonâ fide holder acquiring bill after dishonour takes it subject to equities of all parties having interest: *Young v. MacNider*, 25 S. C. 272. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Understanding between indorser and payee that former is not to be held liable an equity attaching against person taking after maturity: *McQuin v. Sorrell*, 2 All (N.B.) 140.

Also note given as a gift to son by way of advancement: *Thomas v. McLeod*, 1 Han. (N.B.) 588. And agreement to let board bill go in reduction: *Ching v. Jeffery*, 12 Ont. A. R. 432.

Indorsee only liable to equities attaching to bill itself: *Wood v. Ross*, 8 U. C. C. P. 299.

Section 72 (Dishonoured bill). Agreement between maker and payee that note shall be used for a particular purpose only constitutes an equity attaching, if it is used in violation of agreement, in hands of bona fide holder for value who takes it after dishonour: *MacArthur v. MacDowell*, 23 S. C. 511.

Section 73 (Re-issue). See *Cuvillier v. Fraser*, 5 U. C. Q. B. 152; *Black v. Strickland*, 3 O. R. 217; *Hovey v. Nolin*, 18 R. L. 139.

Section 74 (Rights of holder). A bank discounting a note in form not negotiable but intended to be so when made, may recover from makers: *Harvey v. Bank of Hamilton*, 16 S. C. 711; 9 O. R. 655, affirmed.

Clerk in office of attorney with whom note indorsed in blank was left for collection may sue though having no interest: *Shepley v. Hurd*, 3 Ont. A. R. 549; *Mills v. Philbin*, 3 Rev. de Leg. 255; *Ridgeway v. Dansereau*, Q. R. 17 S. C. 176. And see *Street v. Quinton*, 18 N. B. 567.

Insurance agent can sue on note given for premium: *McDonald v. Smaill*, 25 N. S. 440.

Note given for lottery tickets not void: *Evans v. Morley*, 21 U. C. Q. B. 547.

But is if given for gambling debt: *Biroleau v. Derouin*, 7 L. C. J. 128; *Contra*, *Dion v. Lachance*, Q. R. 14 S. C. 77.

PRESENTMENT FOR ACCEPTANCE.

Section 75 (When necessary). Sub-section 2 is new law in Ontario. See *Richardson v. Daniels*, 5 U. C. O. S. 671.

Section 77 (Sight bill). What is "reasonable time" is a mixed question of law and fact: *Perley v. Howard*, 2 Kerr (N.B.) 518.

As to what constitutes reasonable time see *Boyes v. Joseph*, 7 U. C. Q. B. 505; *Harris v. Schowb*, 3 R. L. 153; *Wyde v. Wetmore*, 1 G. & O. (N. S.) 507.

PRESENTMENT FOR PAYMENT.

Section 85 (Necessity).—Presentment not necessary if note or bill is due by the drawer or maker and is indorsed: *Bank of Montreal v. Martin*, 10 Q. R. 118; 8 C. R. 361.

Not necessary if payable to order and indorsed: *Bank of Montreal v. Gaultier*, 10 Q. R. 118; 8 C. R. 361. *Bank of Montreal v. Gaultier*, 10 Q. R. 118; 8 C. R. 361.

Section 86 (By and to whom).—Non-presentment is no step in dishonor of bank: *Bank of Montreal v. McCabe*, 10 Q. R. 118; 8 C. R. 361.

Law of Lower Canada same as that of Ontario and England: *McLellan v. McLellan*, 17 U. C. C. P. 109.

Presentment at bank after hours not sufficient in Quebec: *Watters v. Reiffenstein*, 16 L. C. R. 207.

Not at a store after business hours in New Brunswick: *Fatterson v. Tapley*, 4 A. C. (N.B.) 292. But if made at store closed at 5 p.m. it is good: *Reed v. Kavanagh*, 4 A. C. 157.

As to case of drawee or acceptor being dead: *Dana v. Bradley*, 5 A. C. (N.B.) 207.

Section 88 (Place of presentment).—Change of address. Dishonour: *Browne v. Boulton*, 9 U. C. Q. R. 60.

Due diligence. Bank's liability for failure to present: *Browne v. Commercial Bank*, 10 U. C. Q. R. 129.

Note payable at particular place need not be presented there at maturity to charge maker, though there are funds to meet it. Maker should keep funds there until presentment: *Merchants Bank of Canada v. Henderson*, 28 Q. R. 360.

If bill is at place for payment at maturity it is sufficiently presented: *Merchants Bank v. Mulvey*, 6 Man. 167.

Section 89 (No person at place).—See *Becher v. Amherstburg*, 23 U. C. C. P. 602; *McRobbie v. Torrance*, 5 Man. 114.

Section 91 (Delay).—Valid excuse: *Union Bank v. McKilligan*, 4 Man. 29.

Section 92 (Discharged with).—Not in case of indorsement after maturity: *Davis v. Dunn*, 6 U. C. Q. R. 327. Nor in

By non-though holder and not a party to the bill: *Merchants Bank of Hartford v. Merchants Bank of New York*, 11 S. C. 129.

New note substituted for old note presented for payment: *Chittenden v. Exchange Bank*, 10 U. C. Q. B. 70.

No objection that notice of dishonor on Sunday: *Ib.*

Indorser not liable for notice of dishonor: *Cassidy v. Mansfield*, 20 U. C. C. P. 583; *Loe v. Owen*, 12 U. C. C. P. 101.

Mistake in amount. Subsequent promise to pay: *Thompson v. Cotterell*, 11 U. C. Q. B. 60.

Place may be designated by party "after his signature" through another person: *Id.* *Barre v. Id.*, 16 Ont. A. R. 463.

Notice sent to place designated sufficient though sender knows it is not indorser's real place of business: *Id.*

Notice to wrong address given to agent of indorser sufficient: *Vaughan v. Ross*, 5 U. C. Q. B. 206; *McMurray v. Powers*, 19 U. C. Q. B. 47.

Section 106 (Notice dispensed with. Indorser paid holder note told holder that he would cash it and afterwards told him he had seen cash and was bound to pay as soon as he could, and requested him not to "crown the note." Here, not liable for notice of dishonor: *Britton v. Wilson*, 19 Ont. A. R. 96. And see *Fraser v. McLeod*, 1 Terr. R. 100.)

But where indorser writes "I am going to make latter believe note is cashed" and then actually when he says that he has cashed the note as ordered: *the Beckett v. Cornish*, 10 U. C. Q. B. 100. And a conditional promise to pay, "if and when" indorser uses nothing, waives notice of dishonor: *Burges v. Elliott*, 15 U. C. Q. B. 419. And a promise to pay: *Slaw v. Salmon*, 19 U. C. Q. B. 100; *Loch v. O'Neill*, 19 U. C. Q. B. 233; *McCartney v. Thompson*, 19 U. C. Q. B. 57. As to request for cash: *Beckett v. Cornish*, 10 U. C. Q. B. 115.

PROTEST.

Section 110 (Expense).—109. Notice of protest must be given when note becomes due by insolvency of maker and indorser: *Banque Nationale v. Martel*, Q. R. 17 S. C. 97. And see section 109.

Section 111 (Delay excused).—Curator to cession de biens has no authority to waive protest of note indorsed by insolvent: *Molsons Bank v. Steele*, Q. R. 23 S. C. 316; *Dunlop v. Mendelsohn*, Q. R. 22 S. C. 174, affirmed by 23 S. C. 128. *Contra*: *In re Boudin*, Q. R. 12 S. C. 180.

Indorsing on note "I hold myself responsible for my note" is waiver of protest: *Ranger v. Aumais*, 5 Que. P. R. 450. And see *McLaurin v. Seguin*, Q. R. 12 S. C. 63.

Section 116 (Better security).—Where maker and indorser both become insolvent holder may proceed against both, but before proceeding against indorser should protest note: *Banque Nationale v. Martel*, Q. R. 17 S. C. 97.

LIABILITIES OF PARTIES.

Section 117 (Equitable assignment).—An accepted cheque not an equitable assignment: *Caldwell v. Merchants Bank*, 26 F. C. C. P. 294. But otherwise in Quebec: *Marler v. Molsons Bank*, 23 L. C. J. 293.

Section 128 (Engagement by acceptance).—Drawee promising to accept or obtaining benefit of funds: *Torrance v. Bank B. N. A.* 15 L. C. J. 169; 17 L. C. J. 185; *Dunsmuir v. Molsons Bank*, 23 L. C. J. 57; *Bank of Montreal v. Thomas*, 16 O. R. 503.

Acceptor liable where drawee's signature forged: *Rex v. Bank of Montreal*, 11 Ont. L. R. 595, affirming 10 Ont. L. R. 117. Affirmed by Sup. Court 19 Feb., 1907: *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. A. R. 533.

Validity of indorsement where bill is indorsed before acceptance: *Ryan v. Bank of Montreal*, *supra*.

Section 129 (Foppel). Applies also to notes. Section 186.

Indorser of note purporting to be drawn by corporation estopped from claiming it was ultra vires of the makers: *Merchants Bank v. United Empire Club*, 44 U. C. Q. B. 468.

Section 131 (Irregular indorsement). Applies also to notes: see section 186.

Surety for a debt wrote his name across back of note made by debtor. Being sued as maker there was no evidence that he intended to become such. Held, that he might have been liable as indorser had notice of dishonour been given: *Ayr American Plough Co. v. Wallace*, 21 S. C. 256.

Promissory note made by two persons, one signing for accommodation of the other. After maturity it was signed by a third person. Held, that latter signed as maker not indorser: *Carrique v. Beaty*, 24 Ont. A. R. 302, reversing 28 O. R. 175.

Where note payable to person named is indorsed by another before delivery to payee, former is liable as indorser to holder in due course: *Duthie v. Essery*, 22 Ont. A. R. 191; *Robinson v. Mann*, 31 S. C. 484, reversing 2 Ont. L. R. 63.

But where person signed his name on back of note and payees afterwards indorsed it "without recourse" he was not liable to the latter as indorser, surety or otherwise: *Canadian Bank of Commerce v. Perram*, 31 O. R. 116. And see *Small v. Henderson*, 27 Ont. A. R. 492; *Craig v. Matheson*, 32 N. S. 452.

Section 132 (Trade name). Note signed "R. Manager R. L. Co." Individual members of company held liable: *Fairchild v. Ferguson*, 21 S. C. 481.

Section 133 (Indorser). See *Small v. Riddel*, 31 U. C. C. P. 373; *Poisson v. Bourgeois*, Q. R. 17 S. C. 94; *McRae v. Lionais*, Q. R. 16 S. C. 262; *McLeod v. Carman*, 1 Han. (N.B.) 602.

Section 131 (Measure of damages). Note carrying interest at rate of "two per cent. per month until paid" only bears legal rate of six per cent. after judgment: *St. John v. Rykert*, 10 S. C. 278. And see *Powell v. Peck*, 15 Ont. A. R. 138; *Grant v. People's Loan & Deposit Co.*, 18 S. C. 262.

Section 137 (Transfer by delivery). Transferrer liable on consideration of transfer: *Merchants Bank v. Whidden*, 19 S. C. 53; *Mitchell v. Holland*, 16 S. C. 687.

Transferee must use reasonable diligence: *Conn v. Merchants Bank*, 30 U. C. C. P. 380.

Section 138 (Warranty by transfer). See *Lewis v. Jeffery*, M. L. R. 7 Q. B. 141; *Miller v. Daudelin*, 24 L. C. J. 208.

DISCHARGE OF BILL.

Section 139 (Payment). Taking note of new firm for goods sold to old: *Watts v. Robinson*, 32 U. C. Q. B. 362.

Credit in bank books: *Nightingale v. City Bank*, 26 U. C. C. P. 74; *Cleveland v. Exchange Bank*, 31 L. C. J. 126; *Goodall v. Exchange Bank*, M. L. R. 3 Q. B. 430.

Course of dealing: *Birkett v. McGuire*, S. C. Dig. 1030, reversing 7 Ont. A. R. 33.

Presumption by possession of note: *McKenzie v. Frizzell Ramsay*, A. C. 77; *Stephenson v. Miller*, 27 N. B. 12.

Acceptance of renewal: *Murray v. Gastonguay*, 13 N. S. 319.

Set-off: *Wood v. Ross*, 8 U. C. C. P. 299; *Smith v. Nicholson*, 19 U. C. Q. B. 27.

Compensation in Quebec: *Amazon Ins. Co. v. Quebec & G. P. S. S. Co.*, 2 Q. L. R. 310; *Quintal v. Aubin*, M. L. R. 1 S. C. 397; *Exchange Bank v. Canadian Bank of Commerce*, M. L. R. 2 Q. B. 476; *Riddell v. Goold*, M. L. R. 5 S. C. 170; *Lapage v. Hamel*, 19 R. L. 439.

Acceptance for accommodation of third party. Payment by drawer does not relieve acceptor: *Dill v. Wheatley*, 34 N. S. 526.

Discharge by agreement for payment by payee for whose accommodation bill was made: *Waison v. Porter*, 3 Kerr (N.B.) 137; *Peters v. Waterbury*, 24 N. B. 154.

Section 110 (Payment by drawer or indorser). Drawer's right to recover from acceptor: *Bank v. Sir Johnland*, 3 O. R. 211; *Goodale v. L'Esclapart*, Bank, M. L. R. 3 Q. B. 430.

Indorser who pays does not incur liability on re-rogation against prior parties: *Boye v. McDonald*, 46 L. C. R. 191.

Two indorsements for accommodation of maker. Last indorser paying can only recover half the amount from prior indorser: *Vallee v. Talbot*, Q. R. 1 S. C. 223.

No recourse against prior indorsers where no protest nor waiver: *Savaria v. Pénote*, Q. R. 20 S. C. 344.

Section 111 (Acceptor holding at maturity). Principle of section is "conclusion" of civil law: Arts. 1198, 1199 C. C.

Section 142 (Renouncing rights). Payment of sum less than amount of bill is a discharge in Quebec, Ontario and Manitoba, which have adopted the civil law rule: *MacLaren on Bills*, 6th ed., 340.

Section does not apply where plaintiff's title to bill is obtained by assignment without indorsement: *Clonbrock Steam Boiler Co. v. Brown*, Q. R. 18 S. C. 515.

Time given to maker of note is set off as indorser: *Shepley v. Hurd*, 3 Ont. A. R. 500; *Beck v. Eaton*, 2 Kerr (N.B.) 241. But not delay or indulgence with no binding agreement to give time: *Wilson v. Brown*, 6 Ont. A. R. 87; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Pelletier v. Brossard*, M. L. R. 6 S. C. 331; *Guy v. Péro*, Q. R. 1 S. C. 443; *Le Jeune v. Sparrow*, 1 Terr. L. R. 384.

Reservation of rights: *Canadian Bank of Commerce v. Northwood*, 14 O. R. 201.

Time to indorser for whose accommodation note was made: *Leet v. Blumenthal*, Q. R. 13 S. C. 250; *Devanney v. Brownlee*, 8 Ont. A. R. 355; *Banque Nationale v. Betournay*, 18 R. L. 175.

And see *Merchants Bank v. McKay*, 15 S. C. 672; *Allison v. McDonald*, 23 S. C. 635.

Sections 140, 141 (Cancellation). Cancellation of signature: *Bank of Montreal v. Armstrong*, 5 R. L. 213; *Biggs v. Wood*, 2 R. L. 217; *Isaacs v. Grothe*, 29 N. B. 420.

Section 142 (Alteration). Addition to note by holder of words "extended to Nov. 28th, '02," written on its face, discharged maker: *Montreal Assur. Co. v. McLaughlin*, 32 C. L. J. 630.

Two makers of note, one signing for other's accommodation. Third party signing after maturity a material alteration which discharges accommodation maker: *Carleton v. Beatty*, 21 Ont. A. R. 302, revg. 28 O. R. 175.

Insertion by holder of words "jointly and severally" before "promise to pay" in note signed by several persons, some being sureties for others, a material alteration which avoids note: *Banque Provinciale v. Arnoldi*, 2 Ont. L. R. 621; *Peoples Bank v. Wharton*, 27 N. S. 67. And also changing date of demand payable with interest though maker may benefit: *Boulton v. Langmuir*, 21 Ont. A. R. 618.

But mere correction of error by changing 1886 to 1896 is not: *McLaren v. Miller*, 36 C. L. J. 680.

Insertion of interest clause or rate—Intention—Expert evidence: *British Columbia Land and Investment Agency v. Ellis*, 6 B. C. 82; *Halerow v. Kelly*, 28 U. C. C. P. 551.

Whether alteration is material or not is a question of law: *In re Commercial Bank*, 10 Man. 171. But question of the alteration itself is for the jury: *Domville v. Davies*, 13 N. S. 159; *Street v. Walsh*, 5 All. (N. B.) 343.

For other examples of material alterations see *McLaren*, 3rd ed., 350-3.

ACCEPTANCE FOR HONOUR.

Section 153 (*Supra protest*). Person taking up for benefit of particular party obtains title of person from whom, not for whom, he receives it. He cannot indorse it over and all parties subsequent to him for whose honour it is taken up are discharged: *Cowan v. Deolittle*, 46 U. C. Q. B. 398; *MacArthur v. MacDowall*, 23 S. C. 571.

LOST INSTRUMENTS.

Section 157 (Indemnity). Offer to reimburse maker if note should be found not sufficient. Should be offer of security that maker should never be troubled: *Pillow & Hersey Co. v. L'Esperance*, Q. R. 22 S. C. 213.

Rule applies to case of non-negotiable note probably destroyed, as well as to a negotiable note merely mislaid: *Ib.*; *Cooley v. Dominion Building Soc.*, 24 L. C. J. 111.

And see *Rowan v. Ross*, 3 Que. P. R. 391.

Security may be given to satisfaction of Master: *Orton v. Brett*, 12 Man. 448.

In Quebec demand for security should be by exception dilatoire under art. 177 C. C. P.: *Brown v. Barden*, Q. R. 13 S. C. 151.

Bank not liable for note lost in mails—Offer of security: *Litman v. Montreal City and District Savings Bank*, Q. R. 13 S. C. 262.

Surrender of bill obtained by fraud: *McIntyre v. McGregor*, 21 C. L. T. Occ. N. 25; *Matthews v. Marsh*, 5 Ont. L. R. 540.

Decree for plaintiff without security when defendant did not demand it: *Abell v. Morrison*, 23 Gr. 109.

See also *Hudon v. Gervais*, Q. R. 7 S. C. 221.

CONFLICT OF LAWS.

Section 160 (Governing law). Application of law of a particular Province: *Cook v. Dodds*, 6 Ont. L. R. 608; *Hope v. Caldwell*, 21 U. C. C. P. 241; *Robertson v. Caldwell*, 31 U. C. Q. B. 402.

Note payable abroad governed by Canadian law: *Cloyes v. Chapman*, 27 U. C. C. P. 22; *Merchants Bank v. Stirling*, 13 N. S. 439.

Bill drawn on resident of Ontario governed by foreign law: *Story v. McKay*, 15 O. R. 169. And see *London & Brazilian Bank v. Maguire*, Q. R. 8 S. C. 358.

Section 162 (Duties of holder). Presentment, etc., governed by foreign law: *Howard v. Sabourin*, 5 L. C. R. 45; *Allen v. McNaughton*, 4 All. (N. B.) 234.

Section 161 (Due date). Note drawn in Montreal payable in New York matured on Sunday. Protest on Saturday according to New York law was regular: *Bank of America v. Copland*, 1 L. N. 151.

PART III.

CHEQUES ON A BANK.

Reference in general is directed to the annotations in Parts II. and IV.

Section 165 (Nature of cheque). See the definition of a Bill of Exchange in s. 17. See also the annotations to s. 23, *supra*, that section dealing with bills payable on demand. "Bank" here must be read in the light of the definition in s. 2 (c) of the Act. This excludes unincorporated banks or savings banks.

"A post-dated cheque is the same thing as a bill of exchange at so many days' date as intervene between the day of delivering the cheque, and the date marked upon the cheque." Per Kelly, C.B., in *Forster v. Mackreth*, L. R. 2 Exch. at p. 167.

Since the law was codified in England by the Bills of Exchange Act, 1882, it has been decided that a document in the form of a cheque addressed by one branch of a bank to another branch of the same bank would not fall within the meaning of a "cheque" as defined in this section: See *Brown v. National Bank*, 18 T. L. R. 669; *Capital and Counties Bank v. Gordon* [1903] A. C. 240.

And see *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244.

A cheque should not be paid before the date it purports to be drawn: See per Abinger, C.B., in *Morley v. Culverwell*, 7 M. & W. at p. 181.

A cheque is not invalid because "it is antedated, or postdated, or that it bears date on a Sunday or other non-judicial day": See s. 27 *supra*. Nor is it invalid because it does not specify the value given, or the place where it is drawn or where it is payable: see *Ibid.* See also *Wood v. Stephenson*, 16 U. C. Q. B. 419.

As to whether a cheque is "money": See *Davidson v. Fraser*, 23 Ont. A. R. 139; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155. In *Russch v. Seay*, 2 N. Z. R. C. A. 198, it was held that an accepted cheque was equivalent to cash within the meaning of the New Zealand land regulations of 1857.

Restrictive endorsement of cheque: See *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

A cheque operates as payment until it has been dishonoured: *Hughes v. Canada Permanent, etc., Society*, 39 U. C. Q. B. 321.

As to the law of cheques in general, see the following Canadian cases:—*Agriculture, etc., Assn. v. Federal Bank*, 6 Ont. A. R. 192; *The Queen v. Bank of Montreal*, 1 Ex. C. R. 154; *Boyd v. Nasmith*, 17 Ont. R. 40; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155; *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244; *Kenny v. Price*, 20 R. 1; *Dion v. Boulanger*, Q. R. 4 S. C. 358; *Dion v. Lachance*, Q. R. 14 S. C. 77; *Larraway v. Harvey*, Q. R. 14 S. C. 97; *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518; *Banque St. Hyacinthe v. Guilbault*, 8 Rev. de Jur. 115; *Re Commercial Bank, Banque d'Hochelaga's Case*, 10 Man. R. 171; *Knauth Nachod v. Stern*, 30 N. S. R. 251; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49; *London Life Ins. Co. v. Molsons Bank*, 5 Ont. L. R. 407; *Silverstone v. Bank of Hochelaga*, 21 C. L. T. (Occ. N.) 309; *Marler v. Molsons Bank*, 23 L. C. J. 293; *Brown v. Livingstone*, 21 U. C. Q. B. 438; *City Bank v. Smith*, 20 U. C. C. P. 93; *Thorold Mfg. Co. v. Imperial Bank*, 13 Ont. R. 330; *Todd v. Gore Bank*, 1 U. C. Q. B. 40; *Wood v. Stephenson*, 16 U. C. Q. B. 419; *Blackley v. McCabe*, 16 Ont. A. R. 295; *Gore Bank v. Royal Canadian Bank*, 13 Gr. 425; *Dufresne v. Jacques Cartier Building Society*, 5 R. L. 235; *Dufresne v. St. Louis*, 3 M. L. R. 4 S. C. 310; *Banque Nationale v. City Bank*, 17 L. C. J. 197; *Pratt v. MacDougall*, 12 L. C. J. 243; *Baril v. Tétreault*, 29 L. C. J. 208; *Lord v. Hunter*, 6 L. N. 310; *Campbell v. Riendeau*, Q. R. 2 Q. B. 601; *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10; *Marler v. Molsons Bank*, 23 L. C. J. 293; *Bank of Montreal v. Rankin*, 1 L. N. 302; *Nicholls v.*

Ryan, 2 R. L. 111; *Rex v. Bank of Montreal*, 10 Ont. L. R. 111 (affirmed Sup. Ct. Can.); *London Life Ins. Co. v. Molsons Bank*, 8 Ont. L. R. 238; *Rose-Belford Printing Co. v. Bank of Montreal*, 12 Ont. R. 511; *Légaré-Arcand*, 33 C. L. J. 290.

Section 165, ss. 2 (Presentment for payment). A cheque does not operate as an assignment of the sum named therein to a bank available for its payment, and until acceptance the drawer is not liable: *Caldwell v. Merchants Bank*, 26 U. C. C. P., 291. See provisions of s. 127. But, under clause (b) of s. 165, if the bank has refused to pay a cheque not presented within a reasonable time of its issue, although the drawer had the right at the time of such presentment, as between him and the bank, to have the cheque paid, the bank is liable to the holder of the cheque for the damage sustained by the drawer by reason of such refusal. (See notes to s. 166 *infra*.) See *Silverstone v. Bank of Hochelaga*, 21 C. L. T. (Ont. N.) 309; see, *contra*, *Marler v. Molsons Bank*, 23 L. C. J. 293. Cf. *Gorand's French Code of Commerce* (2nd ed.), p. 241, et seq.

A bank may pay, without special instructions therefor, any bills or notes made or accepted payable there by one of its customers: See *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448; *Bank of England v. Vagliano*, [1891] A. C. 107.

A banker does not owe to the holder of a cheque the duty of knowing his customer's signature: See *Rex v. Bank of Montreal*, 10 Ont. L. R. 117; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49.

As to forged cheque payable to order: See s. 49, *supra*.

As to person drawing a cheque on bank where he has no account upon which he obtains goods or money: See *Crim. Code*, ss. 468 (r) and 465.

Cheque "payable at par" at a named bank—Effect of words—Liability—Right to charge back on dishonour: *Rose-Belford Printing Co. v. Bank of Montreal*, 12 Ont. R. 511.

(Improper payment). Marking by bank—Fraudulent alteration — Money paid under mistake of fact — Negligence — Notice of dishonour — Reasonable delay
Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49, affirming s. c. in 31 S. C. R. 544.

Cheque drawn for specific purpose—Payment—Application to other purposes—Notice—Trust: *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518.

Section 166 (Presentment—Reasonable time). *Chalmers* (Bills of Exchange, 6th ed., p. 259), says that this section is "new law." See the following cases as to "reasonable time":
Re Oulton, 15 N. B. R. 333; *Owens v. Quebec Bank*, 30 U. C. Q. B. 382; *Redpath v. Kelluge*, 16 U. C. Q. B. 433; *Boyd v. Nasmuth*, 17 Ont. R. 40; *Blackley v. McCabe*, 16 Ont. A. R. 295; *Sawyer v. Thomas*, 18 Ont. A. R. 129; *Marler v. Stewart*, 2 Steph. Que. Dig. 111; *Campbell v. Riendeau*, Q. R. 2 Q. B. 604; *Légaré v. Armand*, Q. R. 9 S. C. 122; *Lord v. Hunter*, 6 L. N. 310.

Section 167 (Bank's authority to pay). See notes to s. 165, s.-s. 2, *supra*.

Section 167 (a) (Countermand). See *Twibell v. London Suburban Bank*, W. N. 1869, p. 127; *Cohen v. Hale*, 3 Q. B. D. 371; *McLean v. Clydesdale Bank*, 9 App. Cas. 95; *Elliott v. Crutchley*, [1903] 2 K. B. 476.

Section 167 (b) (Death of customer). See *Colville v. Flanagan*, 8 L. C. J. 225. This case is in apparent conflict with *Hewitt v. Kaye*, L. R. 6 Eq. 198, which decided that in order to constitute a good *donatio mortis causa* of the donor's own cheque on a banker, the cheque must be presented before donor's decease. In the latter case (p. 200), Lord Romilly, M.R., said: "A cheque is nothing more than an order to obtain a certain sum of money, and it makes no difference whether the money is at a banker's or anywhere else. It is an order to deliver the money; and if the order is not acted upon in the lifetime of the person who gives it, it is worth nothing . . . The authority to act upon it is withdrawn by the donor's death." See, however, *Trunkfield v. Proctor* (1901) 2

Ont. L. R. 326, which was held by Falconbridge, C.J., that an order signed by a mortgagor on his private banker with whom he had a deposit account, such order being payable to mortgagee or bearer, and which, although delivered by the mortgagor to his banker, was not paid during the lifetime of the mortgagor, was not a cheque but a bill of exchange, and was not revoked by the drawer (the mortgagor's) death. On appeal, the Divisional Court held that the transaction amounted either to an equitable assignment of the amount or a trust to pay over the same to the mortgagee, which became irrevocable on its being communicated to the parties and assented to by them.

CROSSED CHEQUES.

Section 168 (Dividend warrants). See the provisions of s. 7, *supra*.

Note.—In the 3rd ed. of Mr. Justice Maclaren's work on Bills, Notes and Cheques, it is stated (p. 397) that these provisions relating to crossed cheques "are copied from the Imperial Act, with the substitution of "bank" for "banker," as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not prevail in Canada before the Act, and it is not likely to be generally adopted now, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt s. 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the indorsement on cheques drawn upon it."

See the following English cases on "crossed cheques:" *National Bank v. Silke*, [1891] 1 Q. B. 435; *Bellamy v. Majoribanks*, 7 Exch. 389; *Smith v. Union Bank*, 1 Q. B. D. at p. 33; *Simmons v. Taylor*, 27 L. J. C. P. 248; *Capital & Counties Bank v. Gordon*, [1903] A. C. 240; *Carlon v. Ireland*, 5 E. & B. 765; *Hannan v. Armstrong*, 16 T. L. R. 236; *Clarke v. London and County Bkg. Co.*, [1897] 1 Q. B. 552; *Matthews v. Brown*, 10 T. L. R. 386; *Lacave v. Credit Lyonnais*, [1897] 1 Q. B. 148; *Great Western Ry. Co. v. London & County Banking Co.*, [1901] A. C. 414.

PART IV.

PROMISSORY NOTES.

Reference in general is directed to the annotations in Part II.

Section 176 (Promissory notes defined).

Mr. Justice Macgaren (*Bills, Notes and Cheques*, 3rd ed., p. 406), after observing that this definition is an adaptation of that of a bill of exchange as stated in s. 17 *supra*, goes on to say that it does not change the law existing at the time of the passing of the Act "except that in Nova Scotia and New Brunswick notes payable otherwise than in money, which, under provincial Acts, were in certain respects placed on the same footing as promissory notes payable in money, and were generally called promissory notes, will no longer be so considered. A note payable to a specified person and not to his order, or to bearer, was considered a promissory note before the Act, but was not negotiable."

Reference at large is directed to the notes explanatory of the provisions of s. 17, *supra*, defining a bill of exchange. See also the following cases, where instruments more or less irregular in form were held to be valid promissory notes:

Babineau v. Laforest, 37 N. B. R. 156, affirmed 37 S. C. R. 521, where it was held that the following was a good promissory note:—

\$1,200. "Edmundston, N.B., July 12th, 1899.

"Received from N. P. B. the sum of twelve hundred dollars for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. (Signed) F. L."

Church subscription list as several note of each subscriber: *Thomas v. Grace*, 15 U. C. C. P. 462.

Municipal debentures under C. S. L. C. c. 35, payable to bearer: *Eastern Townships Bank v. Compton*, 7 R. L. 446, *Macfarlane v. St. Cesaire*, M. L. R. 2 Q. B. 160.

Instrument worded:—"On demand ——— months after date, I promise to pay to A. B., or order," etc.: *Commercial Bank v. Allan*, 10 Man. R. 330.

A notarial act containing an engagement to pay a sum of money in any event and unconditionally: *Aurele v. Durocher*, 5 R. L. 165.

A promise to pay in cash or goods at option of holder: *McDonell v. Holgate*, 2 Rev. de Leg. 29.

Instrument purporting to be given for a binder which was to remain property of the payee until paid for, the payee to do repairs, etc.: *Merchants Bank v. Dunlop*, 9 Man. R. 623. But see *Dominion Bank v. Wiggins*, 21 Ont. A. R. 275; *Imperial Bank v. Bromish*, 16 C. L. T. (Oce. N.) 21; *Bank of Hamilton v. Gillies*, 12 Man. R. 495; *Prescott v. Garland*, 34 N. B. R. 291.

And see *Kennedy v. Exchange Bank*, 30 L. C. J. 266; *Palliser v. Lindsay*, M. L. R. 6 Q. B. 311.

(Fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it. Held, that signer was not liable: *Banque Jacques Cartier v. Lessard*, 13 Q. L. R. 39.

And see *Jacques Cartier Bank v. Lalande*, Q. R. 20 S. C. 43.

As to intention of parties to make a promissory note when instrument not negotiable in form: See *Harvey v. Bank of Hamilton*, 16 S. C. R. 714.

Instrument in form of "I.O.U." sufficient as a negotiable instrument if a promise to pay can be spelled out of it: See *Gray v. Warden*, 29 U. C. Q. B. 535.

In Quebec a simple bon, "Good on demand," has been held in several cases as a good negotiable instrument. See *Hall v. Bradbury*, 1 Rev. de Leg. 180; *Beaudry v. Laflamme*, 6 L. C. J. 307; *Cridiford v. Bulmer*, M. L. R. 4 Q. B. 293; *Désy v. Daly*, Q. R. 12 S. C. 183.

But in the Ontario case of *Palmer v. McLennan*, 22 U. C. C. P. 565, the following: "Good to Mr. Palmer for \$850 on demand," was held not to conform to the requirements of a valid note.

Section 176, s.-s. 2 (Endorsement of note payable to maker's order). See *Burns v. Harper*, 6 L. C. Q. B. 509; *Ennis v. Hastings*, 9 N. B. R. 482; *Wallace v. Henderson*, 7 U. C. Q. B. 88. Cf. *Slater v. Laboree*, 10 Ont. L. R. 648; *Robinson v. Mann*, 31 S. C. R. 484.

Section 176, s.-s. 3 (Collateral security pledged). Cf. the provisions of s.-s. 2 of s. 17, which render a bill of exchange invalid "which orders any act to be done in addition to the payment of money." See notes thereto *supra*. This sub-section annuls the effect of the decisions to the contrary in *Hall v. Merrick*, 40 U. C. Q. B. 566; *Sutherland v. Patterson*, 4 Ont. R. 565.

Section 177 ("Inland" and "foreign"). See *Merchants Bank v. Stirling*, 13 N. S. R. 439.

Section 178 (Delivery). See s. 2 (f) of the Act. See also s. 40 and notes *supra*.

Section 179 (Joint and several note). "The Bills of Exchange Act does not deal with the consequences which are to flow from the character which, according to its provisions, is attached to the promise which a bill or promissory note contains, whether that of joint or joint and several liability. These consequences, in my opinion, fall to be determined according to the law of the province in which the liability is sought to be enforced, and inasmuch as in this province the common law rule as to joint contracts has been superseded by statutory enactment, R. S. O., 1897, c. 129, s. 15, the provisions of the latter are to govern." Per Meredith, C.J., in *Cook v. Dodds* (1903) 6 Ont. L. R. at p. 613. And see *Toronto Dental Co. v. Maclaren*, 14 Ont. P. R. 89; *McDonald v. Gillis*, 33 N. S. R. 244; *Gardner v. Shaver*, 13 C. L. T. (Occ. N.) 287; *Bogart v. Robertson*, 11 Ont. L. R. 295.

For the law of the province of Quebec as to joint and several obligations, see Art. 1105, C. C. L. C., with annotations in *Beauchamp's Civil Code*, vol. I, p. 1077, et seq.

Section 179, s.-s. 2 (Individual promise). See *Creighton v. Allen and Fretz*, 26 U. C. Q. B. 627.

Section 180 (Demand note). See the English case of *Re George, Francis v. Bruce*, 14 Ch. D. 627, and cf. the following Quebec cases: *Dandurand v. Roulier*, 33 L. C. J. 167; *Bachand v. Lalumiere*, Q. R. 21 S. C. 449; *Beaudry v. Renaud*, 8 Rev. de Jur. 490. See also *Thorne v. Scovil*, 4 N. B. R. 557.

Section 180, s.-s. 2 (Reasonable time). See the above cases, and *Commercial Bank v. Allan*, 10 Man. 330; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Banque du Peuple v. Denicourt*, Q. R. 10 S. C. 428.

Section 181. See notes to above section.

Section 182. See notes to s. 180 supra.

Section 183 (Presentment—Liability of maker). See notes to ss. 85, 87 and 88, supra. See also *Merchants Bank v. Henderson*, 28 Ont. R. 360; *Sharp v. Power*, 33 N. S. R. 371; *Cunard v. Symon-Kaye*, 27 N. S. R. 344; *Miller v. Dodge*, 23 N. S. R. 191; *De la Chevrotiere v. Guilmet*, 9 L. N. 412; *O'Brien v. Stevenson*, 15 L. C. R. 265; *Mount v. Dunn*, 4 L. C. R. 348; *Mineault v. Lajoie*, 9 L. R. 382; *Croft v. Hamlin*, 2 B. C. R. 333.

Section 184 (Presentment to bind indorser). See ss. 85-93, with notes, supra. See also note to above section; and consider the affect of s. 92, supra, the provisions of which apply to promissory notes *mutatis mutandis*.

Section 185 (Maker's obligation — Estoppel). See *Perkins v. Beckett*, 29 U. C. C. P. 395; *Kinnard v. Tewsley*, 27 Ont. R. 398.

And see the provisions of s. 152, as to the analogous position of the acceptor of a bill; and see the provisions of s. 186. See also *Duthie v. Essery*, 22 Ont. A. R. 191, and cf. *Ayr, etc., Plough Co. v. Wallace*, 21 S. C. R. 256.

Section 187 (Protest of foreign notes). Cf. the provisions of s. 112 as to the necessity of protesting foreign bills of exchange.

